161 U S 350

161-350

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~400.~~ 116

GEORGE W. COCHRAN, APPELLANT,

vs.

ISAAC L. BLOUT, TRUSTEE; JAMES P. RYON AND JULIUS LANSBURGH.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 3, 1892.

(15,036.)

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1 In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Complainant, *vs.* ISAAC L. BLOUT, JULIUS LANSBURGH, JAMES P. RYAN and Burr R. Tracy, Partners, Trading as Ryon and Tracy; Norris Clark and Henry C. Tracy, Defendants.	No. 12133. In Equity.

Be it remembered that in the supreme court of the District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 *Original Bill.*

Filed November 14, 1889.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Plaintiff, *vs.* ISAAC L. BLOUT, JULIUS LANSBURGH, JAMES P. RYON and Burr R. Tracy, Partners, Trading as "Ryon and Tracy;" Morris Clark and Henry C. Tracy, Defendants.	In Equity. No. 12133.

To the honorable the justice of the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff, George W. Cochran, brings this his bill of complaint against the above-named defendants, and thereupon he avers and shows—

1. That he is a citizen of the United States, commorant in said District, and brings this suit in his own right.

2. That defendant Isaac L. Blout is a citizen of the United States, commorant in said District, and is sued both in his own right and as trustee as hereinafter shown.

3. That the defendant- Julius Lansburgh and Morris Clark are citizens of the United States, commorant in said District, and are sued in their own right.

4. That defendants James P. Ryon and Burr R. Tracy are citizens of the United States, commorant in said District, and are partners, trading under the firm and style of "Ryon and Tracy," and are sued in their own right.

5. That defendant Henry C. Tracy is a citizen of the United States, resident in the county of Bradford, State of Pennsyl-
3 vania, and is sued in his own right.

6. That heretofore, to wit, on or about the first day of June, A. D. 1886, by deed of that date, one Samuel Bieber, trustee, conveyed all of square numbered 980, in the city of Washington, District of Columbia, to defendant Isaac L. Blout, his heirs and assigns,

in and upon the following trusts, to wit: "In trust to sell the same either in whole or according to such subdivision of said square as may be made and convey the same in fee-simple to the purchaser or purchasers, who shall not be responsible for the application of the purchase-money, provided, nevertheless, that any subdivision of said square and any sales thereof in part or in whole that may be made by said party of the second part shall be approved by James P. Ryon, who shall signify such approval by signing such subdivision and all deeds made by said party of the second part to purchaser or purchasers, and the proceeds of such sale or sales apply as set forth in a certain declaration of trust bearing even date with these presents and executed by the said party hereto of the second part;" all of which will more fully appear on reference had to the said deed of conveyance, as recorded in Liber 1192, folio 6, of the land records of said District, which said deed it is prayed may be read at the hearing of this cause and taken and considered a part hereof as herein fully incorporated.

7. That said declaration of trust in said deed of trust referred to and mentioned is not matter of record and this plaintiff does not know the contents thereof in detail, but he is advised and believes and therefore charges and avers and offers to prove that it was in substance to the effect that the said defendant, Blout, held said square for said defendants in the following proportions, to wit, for said Julius Lansburgh two-sixths ($\frac{2}{6}$), for said Ryon and Tracy one-sixth ($\frac{1}{6}$), for said Morris Clark one-sixth ($\frac{1}{6}$), for said Henry C. Tracy one-sixth ($\frac{1}{6}$), and for said Isaac L. Blout one-sixth ($\frac{1}{6}$).

4 8. That some time in the spring of the year 1889 the said defendant, Julius Lansburgh, acting, as this plaintiff is advised and believes and so believing charges, avers, and offers to prove, under and by virtue of authority in that behalf in him vested by said Isaac L. Blout and the other defendants, parties in interest in said square, placed the said square in the hands of one Joseph T. Dyer for sale at and for the sum of twenty-eight (28) cents per square foot and authorized and empowered said Dyer to sell said square at said figure and upon terms usual in such transaction; and said Dyer, acting under the authority in him so vested and as agent for said Julius Lansburgh and others, said defendants, on the 26th day of September, A. D. 1889, sold the said square to this plaintiff at and for the sum of 28 cents per square foot upon the terms following—that is to say, one-third of the purchase-money in cash and the balance in one, two, and three years, with interest at six per cent., payable semi-annually. The sum of $300.00 was paid down by this plaintiff as a deposit to bind the bargain, and the property was to be free and clear of liens and incumbrances, as will more fully appear on reference had to said contract of sale, a copy whereof is herewith filed, marked "Exhibit G. W. C. No. 1," which it is prayed may be read at the hearing of this cause and considered and taken as a part hereof.

9. That the sale so made to this plaintiff was on the same day promptly reported by the said Dyer to the parties in interest and was in writing approved by said Julius Lansburgh and said Ryon and

Tracy with the full knowledge, approval, and consent of said James P. Ryon.

10. That the said square is subject to a deed of trust to secure an indebtedness of some $6,000 and upwards to the National Metropolitan Insurance Company of the District of Columbia, which said debt, as this plaintiff is informed, is past due.

11. And the plaintiff further shows that he has always been ready and willing to perform his part of said contract of sale, to wit,
5 to pay in cash one-third of the purchase-money, giving his notes at one, two, and three years from day of sale for the balance, with interest at six per cent., payable semi-annually; said notes to be secured by deed of trust on the property sold, first deducting from said cash payment the amount of said incumberance and the interest thereon to said 26th day of September, 1889, and has so notified the said defendants on delivery to him, this plaintiff, of a deed conveying said property to him, his heirs and assigns forever.

And this plaintiff hoped that said defendant, Blout, and the other defendants, parties in interest in said square, would perform their part of said contract, as in justice and equity they ought to do; but said defendants and each and every of them refuse to perform their part of said contract, and said defendant, Blout, refuses to execute and deliver to this plaintiff a deed conveying to him, this plaintiff, his heirs and assigns, the legal title to said square; and this plaintiff shows that the amount of said cash payment is ready and unproductive in his hands for completing the said purchase.

Which said refusal of said Blout and the other defendants is contrary to equity and good conscience, and tends to the manifest wrong, injury, and oppression of the plaintiff in the premises.

In tender consideration whereof and forasmuch as this plaintiff is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where such matters are properly cognizable, he therefore prays:

1. That said Isaac L. Blout, Julius Lansburgh, James P. Ryon, Burr R. Tracy, and Morris Clark and Henry C. Tracy may be made parties defendant to this bill, and said Isaac L. Blout, Julius Lansburgh, James P. Ryon, Burr R. Tracy, and Morris Clark duly served with process commanding them and each of them to be and
6 appear in this honorable court by some certain day, to be in said process named, to answer the premises and abide by and perform such order or decree as may be passed herein; and forasmuch as said Henry C. Tracy is a non-resident, that the usual order of publication may issue warning him of the substance of this bill and that he be and appear in this honorable court in person or by attorney to answer the premises.

2. That said defendants and each and every of them may be compelled by decree of this honorable court specifically to perform the said agreement so as aforesaid made by their agent with this plaintiff, and the said defendants, Isaac L. Blout and James P. Ryon, compelled to execute and deliver a deed in due form of law conveying said square numbered 980 to this plaintiff, his heirs and

assigns, this plaintiff being willing and hereby offering and agreeing to perform his part of said contract, to wit, to pay one-third of the purchase-money in cash and to give his promissory notes, to be secured by a first deed of trust on the property sold and bearing interest at six per cent. from the 26th day of September, 1889, for balance of said purchase-money, the indebtedness now standing against said property being first paid and satisfied and the deed of trust to secure the same released.

3. That the plaintiff may have such other and further relief as the nature of the case may require.

And the plaintiff will ever pray, &c.

GEO. W. COCHRAN.

SAM. MADDOX,
Solicitor for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, a notary public in and for said District, personally appeared George W. Cochran, who, being first duly sworn, deposes and says: I have read over the above bill by me subscribed and know the contents thereof. The matters and things therein stated of my own knowledge are true, and the matters and things therein stated on information and belief I believe to
7 be true.

GEO. W. COCHRAN.

Subscribed and sworn to before me this 14th day of November, A. D. 1889.

[SEAL.]

F. B. DANTE,
Notary Public.

EXHIBIT G. W. C. No. 1.

WASHINGTON, D. C., *Sept. 26th*, 1889.

Received of George W. Cochran, Esq., a deposit of three hundred ($300) dollars to be applied in part payment of purchase of all of square 980, sold him for 28 cts. per sq. ft., on following terms: ⅓d cash, bal. in 1, 2, and 3 years, with int. at 6 per cent., payable semi-annually; property sold as a good title or no sale; all taxes to be paid to November 30th, 1889. The purchaser is required to make full settlement, in accordance with terms of sale, within twenty days from this date or deposit will be forfeited.

Conveyancing at purchaser's cost.

J. T. DYER,
Agent for Julius Lansburgh and Others.

Subpœna to Answer.

Issued November 14th, 1889.

In the Supreme Court of the District of Columbia, November 14th, 1889.

GEORGE W. COCHRAN, Complainant,
vs.
ISAAC L. BLOUT *et al.*, Defendants. } No. 12133, Equity Docket 30.

The President of the United States to Isaac L. Blout, Julius Lansburgh, James P. Ryon, Burr R. Tracy, Morris Clark, and Henry C. Tracy, defendants:

You are hereby commanded to appear in this court at its 8 first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By W. B. WILLIAMS,
Assistant Clerk.

MEMORANDUM.—That the defendant- herewith served *is* to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Returned December 3rd, 1889.

Served Isaac L. Blout, Julius Lansburgh, Burr R. Tracy, Morris Clark November 14, 1889; James P. Ryon November 19, 1889; Henry C. Tracy not to be found December 3, 1889.

D. M. RANSDELL, *Marshal.*

Entry in Order Book 11, *Page* 103.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } No. 12133.

The clerk will please enter my appearance for defendants Blout, Lansburgh, and Clark.

LEON TOBRINER.

Appearance entered as ordered.

BY THE CLERK.

'89, 12, 3.

9 *Order pro Confesso.*

Filed December 4, 1889.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } In Equity. No. 12133.

It appearing to the court that defendants Isaac L. Blout, Julius Lansburgh, and Morris Clark, though duly served with subpœnas on the 14th day of November, A. D. 1889, have entered no appearance in this cause, it is therefore, this 4th day of December, A. D. 1889, ordered that the bill be, and the same hereby is, taken *pro confesso* against said defendants, Isaac L. Blout, Julius Lansburgh, and Morris Clark.

By the court:

W. S. COX, *Justice.*

Order Vacating Decree pro Confesso.

Filed December 5, 1889.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } In Equity. No. 12133.

It appearing that the order *pro confesso* passed herein on the 4th day of December, 1889, was improvidently passed, it is, this 5th day of December, 1889, ordered that said order *pro confesso* be, and the same is hereby, vacated and for nothing held.

By the court:

W. S. COX, *Justice.*

10 *Answer of Defendant Isaac L. Blout.*

Filed January 3, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } No. 12133. Equity.

Separate answer of defendant Isaac L. Blout.

This defendant, by protestation, not confessing or admitting as true the various matters and things aver-ed in complainant's bill, for answer to so much and such parts thereof as he is advised it is necessary and material for him to answer, makes answer and says;

1, 2, 3, 4, 5, and 6. This defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 to be true.

7. He admits that the declaration of trust mentioned in paragraph seven (7) of said bill is not a matter of record. The exhibit filed with the answer of his codefendant Lansburgh is, as he believes, a substantial copy of the declaration as held by said Lansburgh and by the other parties.

8. Answering paragraph eight (8), this defendant denies that he ever in any manner whatsoever authorized or empowered his codefendant Julius Lansburgh to sell or offer for sale or in any manner place upon the market for sale the real estate in these proceedings mentioned or that he ever authorized said Dyer to sell the same. He knows nothing of the authority alleged to have been given by said Lansburgh to said Dyer or of the alleged sale and contract made by said Dyer to and with complainant, and can neither admit nor deny the allegations in complainant's bill to that effect, but should they be considered material to his interest he demands strict proof thereof.

11 9. He admits that said Dyer, much to the surprise of this defendant, reported to him that he had made sale of said square on September 26th, 1889, but he avers that he refused to recognize the said Dyer as having any authority to make the said sale and refused to confirm or approve of the same.

10. He admits the allegations contained in paragraph ten (10) to be true.

11. Answering paragraph eleven (11), he says that it is true that he refuses to convey said real estate to complainant or sell his interest therein, inasmuch as said complainant has no valid or authorized contract for the purchase of the same.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

ISAAC L. BLOUT.

LEON TOBRINER,
Attorney for Defendant.

I, Isaac L. Blout, on oath do depose and say I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated on information and belief I believe to be true.

ISAAC L. BLOUT.

Subscribed and sworn to before me this 28th day of December, A. D. 1889.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

12 *Answer of Defendant Morris Clark.*

Filed January 3, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } No. 12133. Equity.

Separate answer of defendant Morris Clark.

This defendant, by protestation, not confessing or admitting as true the various matters and things averred in complainant's bill, for answer to so much and such parts thereof as he is advised it is necessary and material for him to answer, makes answer and says:

1, 2, 3, 4, 5, and 6. He admits as true the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of said bill.

7. He has no personal knowledge of the fact that the said deed of trust is not a matter of record. A copy thereof is, as he believes, filed with the answer of defendant Lansburgh.

8. He denies that he ever authorized his codefendant Lansburgh to sell or offer for sale in any manner whatsoever the real estate in these proceedings mentioned. He has no knowledge of the other matters set forth in said paragraph as to the alleged sale by one Dyer to complainant or the terms thereof; can neither admit nor deny the truth thereof. Should the same, however, be material to his interests he demands strict proof thereof.

9. Defendant denies that the alleged sale made by said Dyer to complainant was ever reported by said Dyer to this defendant, or that the said sale was ever approved by him. He knows nothing of the alleged approval thereof by defendants Lansburgh and Ryon.

10. He admits the allegations of paragraph 10 to be true.

11. He knows nothing of the readiness and willingness of
13 complainant to perform his part of said alleged contract. What he does know is that he most emphatically objects to the sale of said square at the price aforesaid and under the circumstances attending the same, and he joins in the refusal of the parties defendant to carry out the same.

And now, having fully answered, he prays to be hence dismissed.

MORRIS CLARK.

LEON TOBRINER,
Attorney for Defendant.

I, Morris Clark, on oath do depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated on information and belief I believe to be true.

MORRIS CLARK.

Subscribed and sworn to before me this 28th day of December, 1889.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

Answer of Defendant Julius Lansburgh.

Filed January 3, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } No. 12133. Equity.

Separate answer of the defendant Julius Lansburgh.

This defendant, by protestation, not confessing or admitting
14 as true the various matters and things averred in complainant's bill, for answer to so much and such parts thereof as he is advised it is necessary and material for him to answer, makes answer and says:

1, 2, 3, 4, 5, and 6. This defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 of said bill to be true.

7th. Defendant admits that the declaration of trust mentioned in paragraph seven (7) of said bill is not matter of record. He files herewith an office copy of said declaration, marked "Exhibit J. L. No. 1."

8th. Answering paragraph eight (8), this defendant says that some time in the month of February, A. D. 1889, happening into the office of one Joseph T. Dyer, a real-estate agent, in the course of conversation defendant mentioned to said Dyer a number of pieces of real estate which he either owned solely or in which he had an interest, naming square No. nine hundred and eighty (980), in said city, and particularly stateing to said Dyer that he merely owned an interest therein, and also saying that he thought that twenty-eight (28) cents per square foot might be accepted by the syndicate owning the same in purchase thereof. Defendant emphatically denies that he was in any way or manner authorized by his codefendant Blout or any of the other parties interested in said square to offer the same for sale, or that he authorized or empowered the said Dyer to sell said square upon terms usual in such transactions or in any other manner whatsoever, but he avers that he merely in referring to said real estate as aforesaid advanced an opinion as to what price might be considered by the parties in interest as an offer therefor; that no terms were discussed or mentioned. Defendant has no personal knowledge that on September 16th, 1889, said Dyer sold said real estate to complainant upon terms set forth in said paragraph, and that he executed the alleged contract of sale as set forth in said bill, and can
15 neither admit nor deny the same, but should the same be material to his interests he demands strict proof thereof. He

again avers that said Dyer had no authority from him to make the said sale or execute the said contract.

9th. Answering paragraph nine (9), defendant says that on the 26th day of September, A. D. 1889, said Dyer informed defendant that he had sold said square nine hundred and eighty (980) for twenty-eight (28) cents per square foot and requested him to approve of the said sale. Defendant refused to do so, saying that he had no authority to approve said sale in the first instance, and that he should first obtain the consent of the trustee, in whom the title to said real estate was vested. Said Dyer subsequently returned to defendant, saying that he had the approval of Ryon and Tracy; that defendant should approve, and that he would then obtain the approval of the said trustees and the other parties interested. This defendant consented to approve the same on condition that the consent of such other parties should be first obtained before the approval should take effect, and that the sale of said square must be as of the whole and not of individual interests, and defendant is informed that his codefendants Blout and Clark refused to approve the same.

10. Defendant believes the allegations contained in paragraph ten (10) to be true.

And now, having fully answered, this defendant prays to be hence dismissed with his proper costs.

JULIUS LANSBURGH.

LEON TOBRINER,
Solicitor for Defendant Blout.

I, Julius Lansburgh, on oath do depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated on information and belief I believe to be true.

JULIUS LANSBURGH.

Sworn to before me January 2, 1890.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

16 EXHIBIT J. L. No. 1.

Filed January 3, 1890.

Whereas Frank P. Murphy by deed bearing even date with these presents conveyed to me, as trustee, all of square numbered nine hundred and eighty (980), in the city of Washington, in the District of Columbia, with power to sell the same or any part thereof, with the written consent of Jas. P. Ryon, and convey the same to the purchaser or purchasers by good and sufficient deed and free from liabilities for the application of the purchase-money: Now, therefore, I do hereby declare that I hold said property for the following purposes and no others, namely: In trust for myself and Julius Lansburgh, Henry C. Tracy, Isaac L. Blout, Morris Clark, and the firm of Ryon and Tracy (consisting of Jas. P. Ryon and Burr R.

Tracy) in equal shares, the said named parties having each contributed one equal sixth of the purchase-money, same to be subdivided in such a manner as may be agreed on by the said named parties in interest, such agreement to be expressed by the written signature of Jas. P. Ryon and to be sold either in whole or in part upon such terms as may be agreed on by the said parties in interest.

Such agreement to be expressed by the written signature of Jas. P. Ryon and to convey the ground so sold to the purchaser or purchasers by good and sufficient deed or deeds and the proceeds of such sale or sales to be paid over unto the said named parties in interest, their executors, administrators, or assigns, according to their respective interests at the time of such sale or sales, it being hereby distinctly understood and agreed that in the event of any sale or sales the purchaser or purchasers shall not be in any way responsible for the application of the purchase-money, and it is further understood and agreed that if the parties in interest shall so direct I will apply the proceeds of sales to the payment of two notes given for the purchase-money to National Metropolitan
17 Fire Insurance Company of the District of Columbia by Frank P. Murphy and secured upon the above-mentioned square instead of paying such proceeds to the parties in interest as above set forth.

Witness my hand and seal this thirteenth day of May, A. D. 1886.

(Signed) SAMUEL BIEBER.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Holdsworth Gordon, a notary public in and for said District, do hereby certify that Samuel Bieber, a party to a certain declaration of trust on the thirteenth day of May, A. D. 1886, and hereto annexed, personally appeared before me in said District, the said Samuel Bieber being personally known to me to be the person who executed the said declaration of trust, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this thirteenth day of May, A. D. 1886.

(Signed) J. HOLDSWORTH GORDON,
Notary Public.

Replication.

Filed January 4, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } In Equity. No. 12133.

18 The plaintiff hereby joins issue upon the answers of defendants Isaac L. Blout, Morris Clark, and Julius Lansburgh.

SAM. MADDOX,
Solicitor for Plaintiff.

Joint and Several Answers of Burr R. Tracy & James P. Ryon.

Filed January 8, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Plaintiff,
vs.
ISAAC L. BLOUT *et al.*, Defendants. } In Equity. No. 12133.

The joint and several answers of James P. Ryon and Burr R. Tracy to the bill of complaint exhibited against them and others in this cause by George W. Cochran.

These respondents, answering, say :

1. They admit to be true the averments of the first seven paragraphs of the bill of complaint.

2. As to the averments of the 8th paragraph these respondents do not know what arrangements were made between defendant Julius Lansburgh and the said J. T. Dyer with regard to a sale of said square 980 at and for the sum of 28 cents per square foot, but these respondents are informed that other real-estate agents in the city had the said square on their books for sale at the same figure.

3. These respondents admit to be true the averments of the 9th paragraph that the said sale was reported to them on the 26th day of September, 1889, and that on the 27th of the same month they approved the sale on the memorandum giving the terms thereof handed to them by said Dyer, and that said approval was made with the full knowledge and consent of the respondent James P. Ryon.

4. Answering the 10 paragraph, they say that said square
19 is subject to an indebtedness of $6,783, on which interest has been paid to Nov. 11, 1889.

5. Answering the 11th paragraph of said bill, these respondents say that they are ready and willing to comply with their part of the said contract of sale so made by said Dyer and reported to and approved by these respondents.

And, having fully answered, these respondents pray to be hence dismissed with costs.

JAS. P. RYON.
BURR R. TRACY.

Subscribed and sworn to before me this 8th day of January, A. D. 1890, by James P. Ryon.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Complainant's Depositions.

Filed May 21, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } In Equity. No. 12133.

WASHINGTON, D. C., *January* 28, 1890—2 o'clock p. m.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Maddox; present on behalf of the defendants, Mr. Tobriner.

Mr. MADDOX: I desire to offer in evidence a deed recorded amongst the land records of the District of Columbia in Liber No. 1192, folio 6, and a copy thereof is filed herewith, showing the title to all of square 980 to be vested in Isaac L. Blout, trustee, and held by him for the use of certain parties named in the declaration of trust mentioned in the deed, but not set forth in full.

It is admitted by and between counsel that this declaration of trust certifies that at the time this bill was filed the property was beneficially owned as follows: One undivided third by defendant Julius Lansburgh; one undivided one-sixth by the defendant Isaac L. Blout; one undivided one-sixth by the defendant Morris Clark; one undivided one-sixth by the defendants Ryon and Tracy, and one undivided one-sixth by the defendant Henry C. Tracy.

JOSEPH T. DYER, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined—

By Mr. MADDOX:

Q. What is your business?

A. I am a real-estate broker.

Q. How long have you been engaged in that business?

A. I have been engaged in that business off and on for 20 years.

Q. Are you acquainted with the defendant Julius Lansburgh?

A. Yes, sir.

Q. How long have you known him?

A. I reckon I have known him some six or seven years. I have known of him a good deal longer than that.

Q. Did you have any business with him in the year 1888?

A. Yes, sir.

Q. State what it was.

A. I was almost in daily communication with Mr. Lansburgh. I think it was somewhere along about the latter part of 1888 I negotiated the lease of the building which he now occupies on F street, which was built for him.

Q. What was the next business you had with him?

A. When we got that matter adjusted one day he men-
21 tioned to me that he had a lot of property he was going to give me for sale. I asked him to make up a list and leave it at the office some day and he said that he would do it.

Q. When was that?

A. That was in January, 1889. On the 16th of January, 1889, he came into the office with a list of the property on a piece of this yellow manilla paper, and he and I sat down and looked it over. He left a memorandum there with me, leaving several pieces of property for sale, which were at once entered on my books on, I think, the 16th day of January, 1889.

Q. Was square 980 mentioned in this list?

A. Yes, sir. I think that altogether there must have been some ten or a dozen pieces of property, and square No. 980 was among them.

Q. What about the price fixed on this property, square 980, if you know?

A. The price on square 980 was 28 cts. per foot.

Q. What price had he given you?

A. Twenty-eight cents was the price he named.

Q. What was said, if anything, about the ownership of square 980 at that time?

A. I don't think the question was even asked or that it was mentioned in any way at all. I took it for granted that he was the owner. Among the properties which he gave me was his warehouse on D between 6th and 7th. It is not customary for an agent to ask a man whether he is the owner or not.

Q. How is it put on your books, as being owned by whom?

A. It was simply entered there in the name of Julius Lansburgh, and nobody else at all.

Q. What did you do looking to the sale of the property, if anything?

A. I undertook to dispose of the property. I advertised it and put it in my bulletin and, as we do in such cases, circulated it wherever I could. I mentioned it to one or two other real-estate men.

Q. Did you put your board upon it?

A. Yes, sir. At the time I put my board on there, or at
22 least the first time I rode out there to look at it, I found other boards on the square. John F. Waggaman's board was on the square also.

Q. When did you first speak to Mr. Lansburgh subsequently about the sale of the property?

A. I had occasion to see him at one time. Mr. Holtzman asked me about what the square could be bought for, and I gave him my price. He afterwards asked me if 200 feet square could be had at the corner of 11th and I streets. I spoke to Mr. Lansburgh about it, and he said 40 cts. I went back and reported to Mr. Holtzman, and he made a proposition of 30 cts., which, upon consultations with Mr. Lansburgh, was rejected. My own suggestion to him at the time was that I might be able to get 35 cts.

Q. Was anything said at this interview about the ownership of the property?

A. I think that at that time he told me that he was not the entire owner of the property and that he would have to see the others, but he did not mention the names of the owners at the time.

Q. What did he say then about the sale of a part of the square, if anything?

A. He seemed to be willing to sell a part of it or all of it, but he stated that the other people did not want to divide it at all; they preferred to sell as a whole. At that time he was very busy moving up into his new store & I used to be in there right frequently, and he used to drop into my office almost every day or two.

Q. What was said at that time, if anything?

A. Well, while that thing was sort of on the carpet, that negotiation, I took Mr. Cochran out one afternoon——

Q. Do you mean Mr. George W. Cochran, the complainant in this suit?

A. Yes, sir; Mr. George W. Cochran. I drove him out that way and showed him the ground. I drove him all around it, and I saw that he was interested in the thing. He asked me what was the price of it, and I told him 28 cts. a foot. He asked me if that was the lowest that would buy it, and I told him it was. After we got away from the square a little further, probably two squares
23 from this block, he said to me, Dyer, I will take that square, if that is the best you can do. I said, Mr. Cochran, it is no use to make any offer on this square; and then I told him of the offer which had been rejected.

Q. You mean this offer of 30 cts. a foot for the corner?

A. Yes, sir. I think he asked me the question about who owned it and I told him Julius Lansburgh was the man I was dealing with, and that I represented him, and that he was the owner of the property or one of the owners, and that I believed Ryon and Tracy were also one of the owners. He went to my office and made a deposit on the square and I gave him a binding receipt for it.

Q. What deposit did he make?

A. $300.

Q. Where is that $300 now?

A. It is in my office.

Q. What are you doing with it?

A. I am holding it subject to the settlement of the sale as Mr. Lansburgh's agent.

Q. Is that the original of the contract you gave Mr. Cochrane (handing the witness a paper)?

A. Yes, sir.

Q. When was that contract of sale signed by you?

A. On the 26th day of September; on the day of its date.

Mr. MADDOX: I offer this paper in evidence.

Said contract is marked Exhibit W. H. S. No. 1, and is in the words and figures following, to wit:

EXHIBIT W. H. S. No. 1.

Office of J. T. Dyer, real-estate, insurance, stock, and note broker, 600 13th street N. W.

WASHINGTON, D. C., *Sept. 26th*, 1889.

Received of George W. Cochran, Esq., a deposit of three
24 hundred, $300, dollars, to be applied in part payment of purchase of all of square 980, sold him for 28 cts. per sq. ft., on following terms: ⅓d cash, bal. in 1, 2, and 3 years, with int. at 6 per cent., payable semi-annually.

Property sold as a good title or no sale; all taxes to be paid to November 30th, 1889.

The purchaser is required to make full settlement, in accordance with terms of sale, within twenty days from this date or deposit will be forfeited.

J. T. DYER,
Agent for Julius Lansburgh and Others.

Conveyancing at purchaser's cost.

Endorsement: 43. Agreement, George W. Cochran with J. T. Dyer.

Received for record October 17th, 1889, at 2.15 o'clock p. m., and recorded in Liber No. 1430, folio 211, one of the land records of the District of Columbia, and examined by—

JAS. M. TROTTER, *Recorder.*

Office of recorder of deeds, District of Columbia.

Personally appeared before me, a notary public in and for the District of Columbia, George W. Cochran, who, being duly sworn, deposes and says that the annexed deposit receipt was given him on receipt of three hundred ($300.00) dollars, paid by him to J. T. Dyer, agent for Julius Lansburgh *et al.*, owners of square 980, to bind the sale of said square at the price and terms named in said receipt.

GEO. W. COCHRAN. [SEAL.]

25 Sworn to and subscribed before me this 17th day of October, 1889.

[SEAL.] F. B. DANTE,
Notary Public.

By Mr. MADDOX:

Q. At that time which one of the owners of the square did you know?

A. I knew then who the owners were.

Q. Before that——

A. I will come to that in a minute or two. After I gave that receipt I at once went over to Mr. Lansburgh's store and notified him

that I had made this sale. I notified him in writing. He turned to me and said, Dyer, I am very busy here. It was, as I said a little while ago, when he was busy moving into his new place. He said, I am very busy and I wish you would see the other people and tell them that I am perfectly satisfied about this sale. I said, Mr. Lansburgh, I only know Ryon and Tracy. I don't know these other gentlemen. It would be better for you to see them. He told me to see them and tell them that he was satisfied with the matter, and that it would be all right. I went back to the office and notified Ryon and Tracy through the telephone. Mr. Ryon told me I had better see him. In the meantime, though, I started out to find Mr. Blout. I went to his store and his wife told me that she thought he was out on I street at Mr. James Lansburgh's or one of the Lansburghs that lives out there, and that I would probably find him there; so I drove out there and on my way I saw him standing at the corner of 2d — H street-, waiting for a car. I drove up to the sidewalk and handed him my card. It was the first time I ever spoke to the gentleman. I told him that I had sold square 980 and Mr. Lansburgh had told me to tell him that he was perfectly satisfied about the sale and he asked me to tell him it had been sold. He said, What did you get for it? I said, 28 cents. He said, I will see about it. I then asked him if he was going home, and I said, If you will get into my wagon I will drive you home. He said, No; that he would take the car; so I bade him good afternoon and left him.

Q. What did he say to you about Mr. Lansburgh having
26 no authority to put the square in your hands for sale?

A. Not a word in any way at all.

Q. When you first reported this sale to Mr. Lansburgh at his store did you have any conversation with him about Mr. Clark's interest?

Mr. TOBRINER: This testimony is all objected to as incompetent, immaterial, and irrelevant.

The WITNESS: Mr. Lansburgh said to me that Mr. Blout and Mr. Clark had just left the store about an hour or two before. He said, Clark was here and offered me his interest for 26 cts. a foot. He followed me to his front door and said, Dyer, what had I better do about it? Hadn't I better go around and get it? I said, Mr. Lansburgh, under the circumstances I don't think it would be exactly fair. You know that the sale has been made and he does not and you would be taking advantage of him 2 cts. a foot. He said, I think you are right; it would not be exactly right. The matter ended there.

Q. When did you first see Mr. Ryon about it?

A. Then I went back to my office and got into my buggy, or, rather, I wrote a notice of sale and carried it down to Ryon and Tracy's office; their office was closed. The next morning I went there and saw Mr. Ryon and Mr. Tracy, and I handed this notice to Mr Ryon and asked him if it was al- right. He said it was. I said, Mr. Ryon, will you please approve it? He turned to Mr. Tracy,

who was sitting at his desk, and called him by name. He said, You have got your pen in your hand, just approve this. He approved it, and I carried it back to Mr. Lansburgh's store. I said to him, Mr. Lansburgh, here is what Ryon and Tracy say; you do the same. He turned right to his counter and approved the sale. He had approved it the day before verbally.

Q. Is this the notice you gave to Mr. Ryon (handing the witness a paper)?

A. Yes, sir.

Q. Did you see Mr. Tracy sign that?

A. Yes, sir.

Q. Did you see Mr. Lansburgh sign it?

A. Yes, sir.

Mr. MADDOX: I offer this paper in evidence.

A copy of said paper is filed herewith, marked Exhibit W. H. S. No. 2.

27 Mr. TOBRINER: I object to this paper as incompetent and immaterial.

Said paper is in the words and figures following, to wit:

EXHIBIT W. H. S. No. 2.

J. T. Dyer, real-estate broker, 1304 F street N. W.

Loans negotiated. Property sold and exchanged. Rents collected. Fire insurance. Notary public.

WASHINGTON, D. C., *Sept. 26th*, 1889.

Messrs. Ryon and Tracy.

DEAR SIR-: I have sold sq. 980 to Geo. W. Cochran, Esq., for 28 cts. per sq. ft., ⅓d cash, bal. in 1, 2, and 3 years, 6 per cent., and have rec'd a deposit of $300 to bind the said sale. Property sold as a good title.

Very truly, &c., J. T. DYER.

Sale approved.

RYON AND TRACY.

Sept. 27, '89.

Approved.

JULIUS LANSBURGH.

By Mr. MADDOX:

Q. What further did you do after that, if anything, with regard to securing the approval of Mr. Blout?

A. I did not have anything to do with it. I left the matter entirely with Mr. Lansburgh. I told him that he had sold this square in good faith and it was for him, as a business man and a gentleman, to deliver it. He acknowledged that he had done it. After the kick commenced he said that he acknowledged that he was in a

bad place about it and that he was in a hole; that he did not want to be mulcted for damages, commissions, and everything of that kind in connection with the sale. He came to the office one
28 day and told me that there was a piece of property out here on boundary, near Eckington, on which Mr. Austin P. Brown had paid him several hundred dollars for options, and that he would, in order to offset or make good any trouble I had been to in the matter, no matter how this thing went, give me the exclusive control of that property for a certain number of days in order for me to make the sale.

Mr. TOBRINER: I object to the testimony as being incompetent and immaterial.

By Mr. MADDOX: Have you done anything further since that regarding this sale?

A. On one or two occasions I tried my best to see if I could not bring about a compromise and arrange the differences, if there was any, in connection with the matter. I did that on my own hook and on my own responsibility, just because I appreciated the position Mr. Lansburgh was in.

Cross-examination.

By Mr. TOBRINER:

Q. Mr. Dyer, what interest have you in the result of this case?

A. Simply my interest as a broker.

Q. If the sale is effected you get your commission?

A. The sale is effected so far as I am concerned the minute the sale is approved. An agent has nothing to do with the delivery of property or of the deeds.

Q. What do your commissions in this case amount to?

A. The regular commission on a sale of that kind is three per cent.

Q. More than the amount of the deposit in your hands?

A. Yes, sir; the sale amounted to twenty-three or twenty-four thousand dollars, I believe.

Q. Do you remember the month and the year in which Mr. Lansburgh handed you the list of this property covering square 980?

A. It was in January, 1889.

Q. There were a number of pieces of property in this list, were there not?

A. Yes, sir.

29 Q. You say you sat down and went over them with him?

A. Yes, sir.

Q. For what purpose?

A. Simply to get the property and to know what I was taking; to get discriptions and to talk to him about it.

Q. That is, you discussed the prices?

A. Certainly. He had his list there, and we went over the whole business—not only the different pieces of property, but the prices.

Q. And also the nature of the improvements upon the various pieces?

A. Not except as to this piece down here. There was a piece in Hooker's Division, which he told me, so far as the improvements were concerned, amounted to nothing, and that he did not count them. He said he simply counted the lot.

Q. Do you remember that in that conversation he pointed out several pieces of property on the list in which he merely had an interest as a member of a syndicate owning the property?

A. I don't think he did.

Q. Will you swear that he did not?

A. I think I can swear that he did not; yes, sir. I was under the impression that Mr. Lansburgh was the owner of the *owner of the* property, though I repeated afterwards to Gen'l Strong, when the question of Mr. Lansburgh's——

Mr. TOBRINER: I object to what the witness repeated to Gen'l Strong.

The WITNESS: I simply told Gen'l Strong that Mr. Lansburgh had placed in my hand a large list of property for sale, as evidence of his further responsibility.

Mr. MADDOX:

Q. Who is Mr. Strong?

A. Gen'l Henry Strong, of Chicago, who owns the building Mr. Lansburgh leases for his store. If Mr. Lansburgh had said that he was a partial owner of that property the property would have been entered on the books in the name of Julius Lansburgh and others. I did not enter it myself; my book-keeper entered it.

30 By Mr. TOBRINER:

Q. And then you went out to look at the square and found these boards of other real-estate brokers placed upon it?

A. Yes, sir.

Q. Did you make any investigation with reference to them, as to who had authorized them to place their boards there?

A. Certainly not. What business was it of mine?

Q. About what time was it you entered into negotiations with Mr. Holtzman for the sale of this 200 feet square?

A. It was some time early in September of 1889.

Q. Had you seen Mr. Lansburgh with respect to this square from the time that he put it in your hands until September, 1889?

A. Mr. Lansburgh used to be in the office frequently, and in a general way we would be discussing real-estate matters, but I did not have any conversation with him especially about this particular piece of property until I began to get offers for it.

Q. When you went to see Mr. Lansburgh with respect to the sale of the 200 feet square to Holtzman he informed you that there were other interested in the square besides himself?

A. That was the first intimation I had that he did not own the whole property.

Q. And he also told you that it would be necessary for him to consult the others before he could authorize you to close the sale?

A. No, sir. When I went to see him about that 200 feet he very promptly said, right off, 40 cents; he believed 40 cents a foot would buy it.

Q. How were the others mentioned?

A. Then, when I came to him with the offer of 30 cents, he said that he would have to consult with the other parties. That was the time that I found out there were other owners than himself.

Q. Did you consult with the other owners at any time between that date and the time you undertook to make the sale to Cochran?

A. I did not recognize anybody in the transaction but Mr. Lansburgh; I was acting for him solely in the matter.

31 Q. Although he had advised you that there were others interested in the property besides himself?

A. Yes, sir; I took Mr. Lansburgh for what he is—a man of business—and I thought he would not offer property if he was not authorized to offer it for sale.

Q. At any time you undertook to make this sale to Mr. Cochran did you make any inquiries of Mr. Lansburgh as to the title of the property?

A. No, sir; I did not say anything at all to him about the title. I took it for granted the title was all right.

Q. Before you made the sale to Mr. Cochran did you get any authority from anybody else but Mr. Lansburgh to make it?

A. I had had, I think, one or two talks with Mr. Ryon, at the suggestion of Mr. Lansburgh, in connection with the offer that had been made.

Mr. MADDOX:

Q. That was the offer of 30 cts. from Holtzman?

A. Yes, sir; and Ryon said it was useless to talk about a part of the ground. He said, You had better go ahead and sell the whole of it.

By Mr. TOBRINER:

Q. At the time you had this conversation with Ryon did you know that Mr. Blout and Mr. Clark were interested in the property?

A. I did not know them by name.

Q. Did you make any inquiries from Mr. Ryon as to the other parties in interest and who they were?

A. I did not. The first time the names were mentioned to me was the day Mr. Lansburgh told me who the owners were, and he then mentioned that Mr. Blout and Mr. Clark had just left his place.

By Mr. MADDOX:

Q. That was the first time you knew they were interested parties?

A. Yes, sir.

By Mr. TOBRINER:

Q. How did you happen to know that Mr. Ryon was interested in the property?

A. Mr. Lansburgh told me.

Q. Did he tell you at that time that the property could not
32 be sold without the consent of Mr. *Hyon* and Mr. Blout?

A. He did not. He told me at that time that he owned two-sixths, that Ryon and Tracy owned one-sixth, and, I think, Mr. Tracy's brother owned a sixth, and that Mr. Clark and Mr. Blout also owned a sixth.

Q. At what time?

A. At the time of this negotiation.

Q. At the time of what sale?

A. The sales by me for Lansburgh to Mr. Cochran.

Q. And that was the first time he told you that?

A. That was the first time he told me who the owners of the property were.

Q. Before accepting Mr. Cochran's offer did you advise with Mr. Lansburgh about it?

A. I had already my authority from Mr. Lansburgh to sell this square at 28 cts. per square foot.

Q. Gotten in January, 1889?

A. Yes, sir; he told me that he would prefer to sell the whole square rather than to divide it up. When I went over there to tell him that I had sold the square at 28 cts. per square foot he said it was all right and asked me about the terms.

Q. Did he tell you at the same time that you had better see Ryon and Tracy and the others?

A. No; he did not tell me I had better see them at all. He asked me to see them and notify them of the sale, and said that he did not have time to go up there.

Q. You went to see Mr. Ryon?

A. Yes.

Q. You told him that Mr. Lansburgh was satisfied with the sale?

A. I did not tell him anything. I handed him that paper.

Q. What was the occasion of your reducing that notice to writing?

A. Simply because it is the way we do in our business.

Q. In all cases?

A. Yes, sir; in very nearly all cases.

Q. In what cases do you omit to do it?

A. When a sale is made we notify the owners of the property that the sale has been made at once.

33 Q. Did you notify Mr. Blout and Mr. Clark in writing?

A. I did not, because I did not recognize them at all. I did not know them.

Q. After you did ascertain that they had an interest in the property did you notify them in writing?

A. No, sir; because Mr. Lansburgh told me he would see them, and Mr. Ryon himself told me that he would see Mr. Blout and get

the papers and give them to me to put them in the hands of an attorney to search the title. I let the matter rest there, so far as I was concerned.

Q. Then you returned to Mr. Lansburgh after getting Mr. Ryon's approval, did you not?

A. Yes, sir.

Q. What did you say to Mr. Lansburgh?

A. I carried that paper right in and told him, Mr. Lansburgh, there is what Ryon and Tracy say. Now, you do the same. He turned right to his counter and signed that paper.

Q. And immediately after that you called upon Mr. Blout?

A. No, sir; I did not.

Q. When did you call on Mr. Blout?

A. I had called on Mr. Blout the evening previous to that, on the day before or on that very day, the 26th. I think it was a holiday. I simply did that at the request of Mr. Lansburgh.

Q. You called upon Mr. Blout after you had made the sale to Mr. Cochran and before you got the approval of Mr. Ryon and Mr. Lansburgh?

A. No, sir; I had Mr. Lansburgh's approval before I saw Mr. Blout. I did not have it in writing, but I had his approval.

Q. I am asking you with respect to this written approval at the bottom of the notice to Messrs. Ryon and Tracy under date of September 26th, 1889.

A. That was gotten the morning after I saw Mr. Blout.

Q. You have undertaken to state the substance of the conversation between yourself and Mr. Blout on the evening of the 26th. Was that all of the conversation?

A. That was all the conversation.

34 Q. Did he at that time express any surprise that you had sold this property?

A. Not a particle, sir.

Q. Did you ever call upon Mr. Clark?

A. I did not.

Q. Why not?

A. Because I did not know Mr. Clark. I did know Mr. Blout by name, but I did not see the necessity of my calling on other of these gentlemen.

Q. Why did you call on Mr. Blout then?

A. At the request of Mr. Lansburgh simply and solely.

Q. Were you not told at that time that the power to sell was vested in Mr. Blout?

A. No, sir; I was not.

Q. When did you first know that?

A. Mr. Ryon first informed me several days after this deposit was made.

Q. How long after?

A. He came to my office, I think, the next day or the day that I notified him to read that receipt and told me that was all right; that he would get the papers, and that he had been to see Mr. Blout about the papers, and that he would get the papers, but he said Mr.

Blout is kicking. I asked him why. He said because he had not been consulted. Well, I said, Mr. Ryon, I hope there will be no trouble about this. He said, No; we all want to sell, and, if it requires a bill in equity, we will make the sale or the deed. We will deed the property.

Q. Who said that?

A. Mr. Ryon. He said that he had to sign the deed, and he told me that Mr. Blout was the trustee, but he (Ryon) had to sign the deed, so I understood that the title was in both of them. I did not know it until that time.

Q. How long was that after the 26th?

A. I think it was the very next day, the 27th or 28th. I won't be certain about the exact date.

Q. Was it after Mr. Lansburgh had approved this sale or before?

A. It was after.

Q. How did you discover that Mr. Blout had refused to sell?

A. By Mr. Ryon telling me that he was kicking because he had not been consulted.

35 Q. Then did you consult Mr. Clark after that?

A. No, sir; I have never seen Clark and would not know him if I were to see him.

Q. Did you see Mr. Blout after that?

A. I met Mr. Blout at Ryon and Tracy's office. Mr. Blout, Mr. Lansburgh, Mr. Ryon, and Mr. Tracy were at their office. I could not tell the exact date. I had been to Julius Lansburgh to try and straighten this thing out and get matters settled up, if possible, in some way without having any lawsuit. I had urged him on several occasions to call a meeting of his syndicate or of his people and arrange the matter. I said, Mr. Lansburgh, if you make a plain statement of this case to these people, —, as business men, are not going to permit you to stay in the position in which you are now.

Q. In entering property upon your books for sale did you also enter the terms upon which it is to be sold?

A. Usually, yes, sir.

Q. Have you your books here?

A. I have not.

Q. Please produce it with respect to the entry as to the terms of this sale.

A. I will do so.

Q. Will you state who authorized you to make the terms one-third cash and the balance in one, two, and three years, with interest at 6 per cent., payable semi-annually?

A. Mr. Tobriner; those are the usual terms for the sale of property, or all cash. The terms of sale were arranged, I think, on my books just in that way.

Q. Is it usual or is it your custom that when a piece of property is put upon your books to ascertain whether there are any incumbrances upon it?

A. Sometimes we ask the question.

Q. Did you ascertain whether there were any incumbrances upon

this property when you had a conversation with Lansburgh in January, 1889?

A. Yes, sir; and I think he told me there were $7,000 against it, or somewhere along there.

36 Q. Do you know as to the status of that incumbrance?

A. No, sir.

Q. When Mr. Lansburgh wrote his signature upon this letter of Sept. 26th, which is a notice to Ryon and Tracy, was there any understanding between you and him that you should get the approval of Mr. Blout and Mr. Clark to this sale?

Mr. MADDOX: I object to the question because the approval speaks for itself.

A. Not one word, sir.

By Mr. TOBRINER:

Q. Did you tell him you were going to see Mr. Blout about it?

A. I did not. He asked me to go and see him.

Q. Did you go and see him?

A. I did go to see Mr. Blout; yes, sir; I met him on the street.

Q. After you had Mr. Lansburgh sign this approval?

A. No, sir—was your question whether I saw these people after the approval?

Q. That is the last question I asked you.

A. No, sir; I did not until I met Mr. Blout in Mr. Ryon's office.

Q. Upon the day Mr. Lansburgh signed this approval did he ask you to see Mr. Blout?

A. He did not.

Q. Did you tell him you had seen Mr. Blout the preceding day?

A. I did.

Q. What did you say that Mr. Blout had said to you?

A. I told him that Mr. Blout would see him or see about it; that was the reply that he had made to me.

Q. And nothing else?

A. No, sir.

Q. You are positive that you have detailed your conversation with Mr. Blout which occurred on the evening of the 26th of September accurately?

A. I have, sir.

Q. And as it actually took place?

A. I have, sir.

Q. And you have omitted nothing?

A. I have not, unless I omitted the words that he would

37 see about it. I recollect his saying that.

Q. You have testified to that?

A. I have detailed everything that occurred.

Q. At whose suggestion, if you know, was this receipt that you gave to Mr. Cochran placed upon record?

A. I told Mr. Ryon myself that if there was any hitch about it this receipt ought to go on record and would go on record. Mr. Ryon told me not to do it yet awhile.

Q. Then, at your suggestion, it was placed on record?

A. Well, I can't say that it was. I went to Mr. Cochran and told him that there was some disposition on the part of certain owners of this property not to stand up to this thing, that there was a disposition to back out of the sale, and that if he wanted to protect his interest he could only do it by putting that receipt *that* record, and I would do that for any client.

Q. You say that you did not know Mr. Blout personally. Did you know him by sight?

A. Yes, sir; by sight.

Q. What was your object in going to see him on the 26th, when you found him on the corner of 2nd and H?

A. I stopped at his store, and I think it was his wife told me——

Q. I mean what was your object?

A. Simply to do what Mr. Lansburgh had asked me to do—to tell him that I had made the sale and that he, Mr. Lansburgh, was perfectly satisfied with the transaction. Anybody to have heard Mr. Lansburgh talk would thought that all he had to do was to say it is so and it was that way. I never dreamed of any kick or opposition or anything of the kind. If I had dreamed that, of course I would have acted a little differently, but I relied strictly upon Julius Lansburgh. His word was as good to me as his written agreement. It was not as if I had met him that day. I had been negotiating with him for months and had studied his interest in every way with regard to that store up there.

Q. I will ask you to turn to your book wherein you keep
38 your property that you have for sale and state what entries are made with respect to square 980.

A. No. 100, ——; unimproved property.
Location, 11th and 12 and I and K streets N. E.
No. of square, 980.
No. of lot, see plat book.
Size and description, 265–5 by 315–2.
Price per square foot, 28 cts.
Terms, ——.

The WITNESS: There is a memorandum there written in lead pencil: Will sell 400 square feet at 11 and I, 40 cents.

Incumbrances and if it can be paid. ——.
Will property be subdivided; and, if so, how? ——.
Is there water main in the street? ——.
Sewer? ——.
Gas? ——.
Is street improved; and, if so, how? ——.
Is lot on the grade? ——.
Owner. See Owner's Index, folio No. 3.
Date of entry, January 16th, 1889.
Has board been placed? Yes.
When placed? ——.
Remarks. ——.

The WITNESS: In pencil is the memorandum: "Sold September 26th, 1889."

Q. The Owner's Index you have not with you?
A. No, sir.

Redirect examination.

By Mr. MADDOX:

Q. Mr. Dyer, how was this property put in your hands for sale, as an entirety or by lot?
A. It was put in my hands to sell as an entire square—as a whole.
39 Q. Why, when you had the offer from Mr. Holtzman for a sale of part of the square, did you report that before making the contract?
A. I told Mr. Holtzman that I was only authorized to sell the whole square at 28 cts., but that if he had any proposition to make for a part of it I would have it submitted.

By Mr. TOBRINER:

Q. What Holtzman is this that we have been talking about?
A. Robert O. Holtzman.

By Mr. MADDOX:

Q. When the Cochran offer was made, did you notify Mr. Lansburgh before signing the contract which you have offered in evidence?
A. Before signing the receipt for the money?
Q. Yes.
A. No, sir; I notified him afterwards.
Q. What does folio 3 refer to in your index of property-owners—what does it show?
A. It shows square 980, at page 100, in the name of Julius Lansburgh.

By Mr. TOBRINER:

Q. Will you be kind enough to name the other squares in the name of Julius Lansburgh at this entry?
A. Square No. 652, No. 713, No. 173, *No. 173*, No. 980, 1008, No. 1096, No. 293. The improved property, of course, is in another book.

By Mr. MADDOX:

Q. Do those entries mean that all of these squares were for sale or that only lots in some of them were for sale?
A. I could not answer that without looking in the property book. My impression is that there were three or four whole squares and the balance was parts of squares.

J. T. DYER.

Subscribed and sworn to before me this 21 day of May, 1890.

WM. HERBERT SMITH,
Examiner in Chancery.

40 SAMUEL MADDOX, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, testified as follows:

Several days before this bill was filed I went to the store of Mr. Julius Lansburgh on 7th street and told him that I had been retained by Mr. Cochran to institute suit for a specific performance of the contract made by Mr. Dyer, and that Mr. Cochran was ready to comply with his contract. Mr. Lansburgh expressed his regret that any hitch had occurred, and after talking the matter over somewhat fully he said, Let us go and see Blout. I think he called him Isaac. He and I took a walk up 7th street to Mr. Blout's store. Mr. Lansburgh went into the store and a lady came forward and greeted him as Julius. He asked for Mr. Blout and she replied that he was not in; that he had gone down to the Post Office. I then walked with Mr. Lansburgh down to the General Post Office, and — our way down we further discussed the situation. I then said to him, Mr. Lansburgh, Mr. Cochran will take your interest whether the others sell or not, and he will pay you all cash for it. I then said, Probably he will not be willing to pay all cash, inasmuch as the contract provides that he may pay one-third cash, but perhaps if a little deduction were made he would be willing to pay all cash. I told him during the conversation that Mr. Cochran was ready and willing to comply with the terms of his contract. Mr. Lansburgh then said, I will go up and get the papers and bring them down tomorrow. You have the money all ready. I said, I will. He then said, Do not say anything to Mr. Cochran about taking off one per cent. for cash, because he may be willing to pay the full amou-t of 28 cents all cash. We were just about to part when Mr. Blout came up. I had never seen him before. I told him that Mr. Lansburgh and I had about agreed upon the sale and conveyance of Mr. Lansburgh's interest, and that Mr. Cochran was ready and willing to take all of the interests and pay for them as he had agreed. Mr. Blout then said that he did not think he was prepared to sell his interest. I am not quite sure whether I
41 mentioned Clark, although I think I did. I asked him how Clark felt about it, and I got the impression that it was no use to see him, as he would not sell on the terms negotiated by Mr. Dyer. We then separated. Mr. Blout and Mr. Lansburgh walked off towards 7th street and I returned to my office. A little later in the evening, probably about 5 o'clock, as I sat in my office, I received a telephone message from Mr. Tobriner saying that Mr. Lansburgh was there, and that he had advised Mr. Lansburgh that he could not be compelled to comply with his contract, but he was considering the matter and would let me know in the morning whether or not the conveyance would be made. The next morning Mr. Tobriner advised me that Mr. Lansburgh, Mr. Blout, and Mr. Clark refused to be bound by Mr. Dyer's contract of sale and would not make the conveyance. I then, as solicitor for Mr. Cochran, filed this bill.

SAM'L MADDOX.

Subscribed and sworn to before me this 21st day of May, 1890.

WM. HERBERT SMITH, *Examiner.*

Testimony in Rebuttal.

WASHINGTON, D. C., *May* 5, 1890—3.30 o'clock p. m.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Maddox; present on behalf of the defendant, Mr. Tobriner.

Whereupon J. T. DYER is called in rebuttal and examined.

By Mr. TOBRINER:

Q. Mr. Dyer, Mr. Lansburgh in his testimony in this case for the defence states that after the negotiations with regard to the sale of a portion of the square 980 at 35 cts. were declared off he
42 did not see you again with regard to it until you brought him a letter addressed to Ryon and Tracy notifying them of the sale at 28 cts., with their approval to said sale endorsed on the paper. Is that correct?

A. No, sir.

Q. What is the fact about that?

A. I saw Mr. Lansburgh on one or two occasions, and as soon as I made the sale of the entire square at 28 cts. I notified him in writing. I carried the letter and delivered it to him in person at his store.

Q. What sort of letter was that?

A. I would have brought my letter book down with me if I had thought about it. It was a letter addressed to Julius Lansburgh, Esq., I think. It says: Dear Sir: I have sold square 980 for 28 cts. a foot to George W. Cochran and have received a deposit.

Q. It was similar in character to the one you have offered in evidence?

A. It is almost the same.

Q. Did you notify Mr. Lansburgh verbally of the sale before you delivered to him this written notice?

A. I carried this notice in and delivered it to him and told him I had sold the square. I said, Read this. He read it and walked with me to his door and told me that Mr. Blout and Mr. Clark had been in his store a few hours before or a short time before that, and that Mr. Clark had offered him his interest in the square for 26 cts. a foot.

Q. What day was that, as near as you can remember?

A. I think it was the 26th day of September.

Q. The day of the sale?

A. Yes, sir; the very day of the sale, whatever day that was. I wrote a letter to Ryon and Tracy after I had notified Mr. Lansburgh.

Q. Mr. Lansburgh states on page 5 of his testimony, When I approved the sale it was an understood thing that he (Dyer) was to get the approval of the trustees and everybody connected with it

before I would give my signature; but at the earnest solicitation of Mr. Dyer, after he got Ryon and Tracy's signatures to it, I
43 put my name on it. He promised to see Blout the same afternoon or the next day; I forget which. What do you say about that?

A. When I left Mr. Lansburgh that afternoon he said to me that he was very busy and could not see these people and he asked me if I would not see Mr. Blout and Ryon and Tracy. I told him that I did not know Mr. Blout, but that if he wished it I would see him.

Q. That is hardly an answer to the question.

A. Well, I do not understand your question.

Q. Mr. Lansburgh states on page 5 of his testimony, When I approved this sale it was an understood thing he (Dyer) was to get the approval of the trustees and everybody connected with it before I would give my signature; but at the earnest solicitation of Mr. Dyer, after he got Ryon and Tracy to do it, I put my name to it, he promising to see Blout the same afternoon or the next day, I forget which. What do you say about that?

A. I will state that there was no such understanding. Mr. Lansburgh did not say anything of the kind in any manner, form, or shape. When I carried back this letter marked W. H. S. No. 2, having the approval of Ryon and Tracy, I stated to him, There is what Ryon and Tracy say, holding it right up to him. I said, Now, Mr. Lansburgh, you do likewise. He did not demur in the slightest degree, but turned to his counter and signed it and made no objection, not the slightest, in any degree at all; but, on the contrary, he told me that he was perfectly satisfied with everything and wanted the matter fixed up and pushed through.

Q. What conditions did he impose upon that approval made by him?

A. None at all.

Q. Mr. Lansburgh states on page 21 of his testimony that you did not come into his store on the afternoon of the day of the sale, and that he did not see you in regard to this sale until after you had exhibited to him the letter to Ryon and Tracy. What do you say about that?

44 A. I reported to Mr. Lansburgh on the afternoon of the sale within one hour—yes, within half an hour—after I received the deposit. I talked with him at his counter and notified him direct, and he walked with me to the front of his store. That was on the very afternoon of the sale. I delivered the notice to him in person.

Mr. TOBRINER: Mr. Lansburgh testified that he came to him on the day of the sale with his notice.

By Mr. MADDOX:

Q. What day did you first exhibit to Mr. Lansburgh the letter addressed to Ryon and Tracy?

A. The 27th day of September. I got the approval of Ryon and

Tracy at half past 9 o'clock on the morning of the 27th. I came right back to Mr. Lansburgh with it and showed it to him.

Q. Will you look at the letter marked J. L. No. 1? Is that the letter that you wrote to Mr. Lansburgh notifying him of the sale?

A. Yes, sir; that is the letter that I took to his store and delivered to him.

Q. In person on the afternoon of September 26th?

A. Yes.

Cross-examination.

By Mr. TOBRINER:

Q. Mr. Dyer, when did you take the letter an- (Lansburgh.) give it to him? (afternoon of the 26th.)

A. On the morning of the 27th.

Q. Will you swear positively that on the afternoon of the 26th day you gave to Mr. Lansburgh the letter marked J. L. No. 1?

A. Yes, sir; most positively.

Q. Do you not remember of having sent it through the mail to him?

A. No, sir; I did not. I delivered it in person, with my own hands.

Q. In what manner was the letter addressed to Ryon and Tracy delivered?

A. In person.

Q. What was the occasion of delivering that letter to Ryon and Tracy?

A. Simply because my business calls for it. I usually deliver letters in person.

45 Q. In all cases?

A. In nearly all cases.

Q. Did you deliver one to Mr. Blout?

A. No, sir.

Q. Why not?

A. Because I did not know him in the transaction at all.

Q. Had you not been notified by Lansburgh on the afternoon of the 26th that Mr. Blout was interested in the sale?

A. Mr. Lansburgh told me that Mr. Blout owned an interest and had offered to sell it to him.

Q. Why did you not serve them with a notice?

A. Because I was dealing with Mr. Lansburgh.

Q. Why did you serve it only on Ryon and Tracy, then?

A. At his request.

Q. Did he not request you to see Blout?

A. He did.

Q. Then why did you not serve a notice on him?

A. I saw Mr. Blout.

Q. Why did you not serve a notice on him?

A. Because Mr. Blout said he would see Mr. Lansburgh.

Q. But you had not seen Mr. Blout before you saw Mr. Lansburgh on the 26th?

A. No, sir.

Q. Then why did you not send a notice to Mr. Blout?

A. Mr. Tobriner, I was dealing with Mr. Lansburgh. I recognized Mr. Lansburgh in the matter. When he asked me simply to go and notify Mr. Blout I did it as a favor to him.

Q. Why did you send a notice to Ryon and Tracy?

A. Simply because I had talked with Ryon and Tracy about this thing before.

Q. But you said your custom was when you made a sale to notify the parties in interest?

A. Yes, sir; most usually.

Q. In pursuance of that custom you notified Mr. Lansburgh and Ryon and Tracy?

A. Yes, sir.

Q. At the time you notified them you knew that Mr. Blout and Mr. Clark were parties in interest in this property?

A. Yes, sir; I did.

46 Q. Why did you notify them?

A. Mr. Lansburgh said that he could see them himself.

Q. Did not Mr. Lansburgh ask you to see them?

A. He asked me to see Mr. Blout. He did not say anything about Clark.

Q. Did he tell you what he wanted you to say to Mr. Blout?

A. No, sir. He simply asked me to see Blout and to tell him that the sale had been made and that he was perfectly satisfied, which I did.

Q. What interest did you understand that Mr. Blout had in the property?

A. I did not ask the question.

Q. Why did you want to see Mr. Blout?

A. Simply because I was asked to do so by Mr. Lansburgh.

Q. Did you know what you were to see him about?

A. Yes, sir.

Q. What?

A. Simply to tell him that I had sold square No. 980, and that Mr. Lansburgh was satisfied.

Q. Did you know that Mr. Blout had an interest?

A. Yes, sir; I knew that he had an interest, but I did not know how much of an interest he owned.

Q. You got Ryon and Tracy to approve of this sale on the 27th?

A. Yes, sir.

Q. Then you took it to Mr. Lansburgh to approve it?

A. I had told Mr. Lansburgh on the 26th.

Q. What was the answer that he gave you?

A. Mr. Lansburgh told me that it was all right and that he was perfectly satisfied. After that I got Ryon and Tracy's approval and carried it back to him and showed it to him, and I said, Here is what Ryon and Tracy say; you do likewise. He turned to his desk and signed it.

Q. Why did he not sign it on the 26th?

A. I did not ask him.

Q. You say that you were dealing with Mr. Lansburgh altogether?

A. Yes, sir.

Q. Was he not the proper person to approve it?

47 A. He was one of the proper persons.

Q. Why didn't you ask him?

A. I did not think of asking him.

Q. Why did you ask Ryon and Tracy first?

A. Simply because I thought it best for me to have them sign it after I had seen them and talked with them.

Q. But you looked to Mr. Lansburgh for your authority?

A. Certainly I did.

Q. Why did you go to Ryon and Tracy if Lansburgh was the one to whom you looked?

A. Because Lansburgh had asked me to see Ryon and Tracy, and also to see Blout.

Q. Before you asked him to approve of the sale?

A. No; when I notified him that I had made the sale.

Q. Answer the question. Was it before you asked him to approve the sale?

A. He had already approved it when he asked me.

Q. But not in writing?

A. No, sir; not in writing.

Q. Why, then, did you before you had gotten the written approval of Lansburgh go to Ryon and Tracy and ask them to approve it, and when you got their approval come to Mr. Lansburgh and say, Now, here is what Ryon and Tracy say; you do the same?

A. Mr. Lansburgh had asked me to let him know what Ryon and Tracy said.

Q. Was there not some understanding at that time about the approval by Mr. Lansburgh?

A. No, sir; none at all.

Q. Why, then, did you go to Ryon and Tracy first and, after having received their signature, say to Lansburgh, You do likewise?

A. I simply thought it was best to do it that way. That was all.

Q. There was no question in your mind about the sale going through at the time?

A. Not a particle.

Q. Then you took all these precautions as a matter of course?

A. That is so.

Q. In all cases you do this?

48 A. Yes, sir; in nearly all cases.

Q. And yet you omitted to get the approval of Blout and Clark?

A. I did not know Mr. Clark at all; his name had not been mentioned, except as Mr. Lansburgh said——

By Mr. MADDOX: You never knew Blout before?

A. No; I never knew Mr. Blout.

By Mr. TOBRINER:

Q. You say you never knew Mr. Blout?

A. No, sir.

Q. You mean in this transaction?

A. No, sir.

Q. When did you have a conversation with Lansburgh about the purchase of Blout's interest by Lansburgh?

A. The purchase of Blout's interest by Lansburgh?

Q. Yes.

A. I don't think I ever had such a conversation.

Q. When did you have a conversation with respect to the purchase of Clark's interest?

A. On the 26th of September, when I notified Mr. Lansburgh of the sale. Mr. Lansburgh told me that Mr. Clark had just left his place a short while before and had offered to sell his interest at 26 cts. a foot, and he asked me then if he had not better go around and secure it.

Q. Then you did know of Blout's interest in the property at that time before you wrote to Ryon and Tracy?

A. Yes, sir; I did.

Q. When did you first hear of Mr. Blout's interest?

A. I don't know when I first heard of Mr. Blout's interest.

Q. When did Mr. Lansburgh first speak to you about Mr. Blout's interest?

A. Mr. Lansburgh never talked to me about his interest at all until after this sale was all over, except to tell me that he had an interest. How much it was I did not know until after we got into this matter.

Q. Did he not ask you to get Blout's approval?

A. He did not; he simply asked me to report to Blout that the sale was made, and he was perfectly satisfied, which I did.

49 Mr. Blount answered by saying that he would see Mr. Lansburgh, and I left him.

Q. And yet you hunted Blout up without knowing why you were going to find him?

A. I just told you why I was going to see him.

Mr. MADDOX: He has told you that several times.

The WITNESS: I went there at the request of Mr. Lansburgh.

Mr. TOBRINER: You have been in the real-estate business in this city for some time?

A. Yes, sir.

Q. You are supposed to be a man of considerable experience. Do you usually carry messages to people in a transaction in which you are interested without knowing why you carry them?

A. No; and I did not carry that one without knowing why I carried it.

Q. Do you mean to say that the only reason that you went to see Mr. Blout about this transaction was because Mr. Lansburgh told you to go?

A. Mr. Tobriner, I would have taken Mr. Lansburgh's word at that time for anything in the world. His word to me then was just as good as his signature, and I would have done anything in reason that he asked me to do in connection with that sale.

Q. What did you say to Mr. Blout?

A. I have testified to that before.

Q. I ask you to testify to it over again.

Mr. MADDOX: You need not repeat it again. If you do, get your testimony in the case and read from it.

By Mr. TOBRINER:

Q. Here is your testimony. I want you to answer that question. Did you not say to Mr. Blout that you had sold square No. 980 for 28 cts. and ask him if he was satisfied with the sale?

A. I did not. You are not reading my testimony.

Q. I am not reading it, but I am asking you whether you did not say that. Did you know Mr. Blout at that time?

A. I knew Mr. Blout by sight.

Q. You did not find him at home when you called for him and you hunted him up?

A. I did not hunt him up.

50 Q. Did you ascertain where he had gone?

A. His wife told me that he had gone out to Mr. Gus. Lansburgh's, I think, or to some entertainment or other, and I drove out there. I met him on the corner of 2nd and H streets, I think.

Q. Is it not a fact that you only obtained the consent of Ryon and Tracy to this sale on condition that you would divide your commissions with them?

A. No, sir; it is not so.

Q. There was no arrangement of that kind made with you?

A. There was an understanding made between us as real-estate men that there would be a division of the commission.

Q. Why did you not ask Mr. Lansburgh to make his approval on the letter addressed to him?

A. Simply for the reason that I told you just now.

Q. Why, then, did you ask Mr. Lansburgh to mark his approval on a letter addressed to Ryon and Tracy?

A. Because I thought for my own protection I had better do it.

Q. Had your confidence in Mr. Lansburgh been shaken over night between the 26th and 27th?

A. Not materially shaken; no, sir.

J. T. DYER.

Subscribed and sworn to before me this — day of ——, 1890.

——— ———,

Examiner in Chancery.

It is agreed by and between counsel that a copy of the certificate signed by Blout as trustee and now held by the defendant Lansburgh may be offered in evidence as an original paper.

Counsel for the complainant thereupon announced his testimony closed.

51 Whereas Samuel Bieber, trustee, by deed bearing even date with these presents conveyed to me as trustee all of square

numbered nine hundred and eighty (980), in the city of Washington, in the District of Columbia, with power to sell the same or any part thereof with the written consent of James P. Ryon, and convey the same to the purchaser or purchasers by good and sufficient deed, and free from liability for the application of the purchase-money:

Now, therefore, I do hereby declare that I hold said property for the following purposes and no other, namely, in trust for myself and Julius Lansburgh, Henry C. Tracy, Samuel Bieber, Morris Clark, and the firm of Ryon and Tracy (consisting of James P. Ryon and Burr R. Tracy) in equal shares, the said named parties having each contributed one equal sixth part of the purchase-money, the same to be subdivided in such manner as may be agreed on by the said named parties in interest, such agreement to be expressed by the written signature of James P. Ryon, and to be sold either in whole or in part upon such terms as may be agreed on by the said parties in interest, such agreement to be expressed by the written signature of James P. Ryon, and to convey the ground so sold to the purchaser or purchasers by good and sufficient deed or deeds, and the proceeds of such sale or sales to be paid over unto the said named parties in interest, their executors and administrators or assigns, according to their respective interests at the time of such sale or sales, it being hereby distinctly understood and agreed that in the event of any sale or sales the purchaser or purchasers shall not be in any way responsible for the application of the purchase-money; and it is further understood and agreed that if the parties in interest shall so direct I will apply the proceeds of sales to the payment of two notes given for the purchase-money to the National Metropolitan Fire Insurance Company of the District of Columbia, by Frank P. Murphy, and secured upon the above-mentioned square instead of paying such proceeds to the parties in interest as above set forth.

52 Witness my hand and seal this June 1st, first day of June, A. D. 1886.

I. S. BLOUT. [SEAL.]

Page 1, line 1, "Samuel Bieber, trustee," written over "Frank P. Murphy," erased.

Witness:

WILLIAM FITCH.

DISTRICT OF COLUMBIA, *ss:*

I, William Fitch, a notary public in and for said District, do hereby certify that Isaac L. Blout, party to a certain declaration of trust dated on the first day of June, A. D. 1886, and hereto annexed, personally appeared before me in said District, the said Isaac L. Blout being personally well known to me to be the person who executed the said declaration of trust, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this first day of June, A. D. 1886.

[SEAL.] WILLIAM FITCH,
Notary Public.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Wm. Herbert Smith, and examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me from the oral statements of the said witnesses at the time and place mentioned in the caption thereof; that the said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching said matters in controversy; that the said depositions were thereupon read over by the said witnesses and by them subscribed.

I further certify that I am not of counsel or in anywise
53 interested in the result of this suit.

WM. HERBERT SMITH,
Examiner in Chancery.

Fees, $30.00, paid by the complainant.

WM. HERBERT SMITH, *Examiner.*

Defendants' Depositions.

Filed May 21, 1890.

WASHINGTON, D. C., *March* 10, 1890—2 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Maddox; present on behalf of the defendant-, Mr. Tobriner.

Whereupon JULIUS LANSBURGH, a witness of lawful age, called by and on behalf of the defendant-, having been first duly sworn, is examined—

By Mr. TOBRINER:

Q. You are one of the defendants in this case, are you not?
A. I am.
Q. Where is your place of business?
A. Corner of 13th and F streets northwest.
Q. How long have you resided in this city?
A. I have been here for thirty-five years.
Q. Do you know Mr. Joseph T. Dyer?
A. I do.
Q. Have you read Mr. Dyer's testimony, filed in this cause?
A. I have.
Q. Mr. Dyer claims that you gave him a list of certain real estate to be placed upon his books for sale. Will you be kind
54 enough to detail the circumstances attending that portion of your transaction with him?

A. I had gone over other matters of business with Mr. Dyer with reference to the leasing of my house that I am now occupying on 13th and F streets. During the course of our conversation on that subject other matters were broached. I told him that I had a lot

of property I would like to sell. He told me he would like to have a list of it; so I gave him one. A few days afterwards, I think, I went into his place of business and I had my property book in my hand. I gave him then and there on a piece of brown paper, which I cut off of a piece of brown paper that was on his desk, a memorandum of all the properties that I owned in part and all that I owned in whole.

Q. Did you specify and point out to him those properties which you owned wholly and those in which you had an interest?

A. I did. I mentioned each and every piece separately. I told him I owned only a portion of this one or that one.

Q. Was square No. 980 mentioned in this list?

A. Square No. 980 was mentioned.

Q. What information did you give with respect to square No. 980?

A. I told him that square No. 980 was owned only by me in part and not as a whole, as I had mentioned other pieces of property that I owned only in part.

Q. Did you inform him that a syndicate owned that property?

A. I did.

Q. He says that you put the price of 28 cents per foot on square No. 980; is that so?

A. I did, because I was positive the syndicate would be willing to take 28 cents a foot; at the time I so stated to him; I knew they would.

Q. Did you hear from Mr. Dyer after that?

A. I never heard anything from Mr. Dyer until about *after* 8 months afterward, when he came into my place and said that he thought he could sell a hundred or two hundred feet square at 35 cents a foot. I thereupon told him that so far as I was concerned I was not willing to sell a portion of it, but that he should
55 call upon Ryon and Tracy and Mr. Blout, and if they were satisfied to sell I would not stand back. I referred him to the trustees. He left me and came back afterwards and told me that he had seen Ryon and Tracy and they refused to sell a portion of that square at any price, but would be willing to sell the whole of it. That is what Mr. Dyer told me.

Q. What did he tell you he was going to do?

A. He never said anything more about it.

Q. When did you hear from Mr. Dyer again?

A. The following day. I am almost sure it was the following day. Mr. Dyer came to me with *with* a letter addressed to Ryon and Tracy and stated that he had sold all of square No. 980 at 28 cents a foot, stating the terms, &c., and asked me to sign it.

Q. Will you be kind enough to look at Exhibit W. H. S. No. 2 and state if you recognize that?

A. Yes, sir; I recognize that paper.

Q. Is that the paper that he showed you at the time?

A. Yes, sir; that is the paper he showed me on the afternoon of that day, September 26, 1889.

Q. What happened then?

A. Mr. Dyer brought this paper to me and asked me to approve

it. I told him to call upon the trustees and get their approval to it.

Mr. MADDOX: I object to any testimony with regard to the conditional signature of this paper, because the paper speaks for itself.

By Mr. TOBRINER:

Q. What happened then?

A. He thereupon left me, and to the best of my knowledge half an hour or an hour elapsed, when he returned to me and said that he had got the approval of Ryon and Tracy and he asked me to put my signature to it, which I did, stating at the same time that he had to give Ryon and Tracy one-half of the commissions in order to get their signature.

By Mr. TOBRINER:

Q. You said that "which I did, stating at the same time that he had to give Ryon and Tracy one-half of the commission."

Mr. MADDOX: Let the examiner read it.

56 Mr. TOBRINER: I want to know if you told Mr. Dyer that he would have to pay Ryon and Tracy half the commissions.

A. No, sir; I did not. He said that to me. I did not understand it that way. He told me that.

Q. He told you what?

A. He told me that he had to give Ryon and Tracy one-half of the commissions in order to get their signature. I asked him whether he had seen the other trustees and he told me no. He asked me to approve the sale.

Q. What did you tell him?

A. I thereupon told him that it was necessary to get the approval of them before I could give my consent. He said that he could not meet Mr. Blout that afternoon, and he asked me whether I would see him. I told him that I was so busy that I could not attend to these matters, as I was just moving into my store, and he had better see him himself.

Q. Did he promise to see him?

A. He promised to see him; yes, sir.

Q. When did you see Mr. Dyer after that?

A. Mr. Dyer came into my place three or four times after that and asked me whether I would not go and see Mr. Blout and have that thing arranged. I told him that I had seen Mr. Blout and that he positively refused to sell. He thereupon asked me if it would not be best for us to have a meeting of the syndicate and get them to ratify the sale as made. I thereupon did everything I could to get them together, or at least I had Mr. Blout and Mr. Ryon and Mr. Tracy and myself at the office of Ryan and Tracy and we talked the matter over, but Mr. Blout refused to sell.

Q. Am I correct in understanding you to say that Mr. Dyer came to you with his notice within an hour after he first showed it to you?

A. To the best of my knowledge; yes, sir; on the same afternoon.
Q. Did he say that he had been to see Mr. Blout at that time?
A. He did not say a word about that at all.
Q. What did he say on your suggestion to him to see Mr. Blout?
A. He told me to see him, as I had more influence with
57 him than he did, and he thought it was best for me to see him. I told him that I was so very busy, that I could not attend to it, and that he had better see him himself.
Q. When you approved that sale what were your instructions to Mr. Dyer?
A. When I approved the sale it was an understood thing that he was to get the approval of the trustees and everybody connected with it before I would give my signature, but at the earnest solicitation of Mr. Dyer, after he got Ryon and Tracy's signature to it, I put my name to it, he promising to see Blout that same afternoon or the next day; I forget which.
Q. What do you remember about it?
A. I was going to state this: that I did not for a moment suppose that Mr. Blout or Mr. Clark would not sell, for I always had an idea that he was a man who was willing to sell.
Q. When Mr. Dyer handed you this notice did you understand that this was a sale of the entire title to the square or only of your individual interest?
A. In what way do you mean?
Q. Did you understand that you were selling your interest or the whole square?

Mr. MADDOX: I object to the question as leading.

A. I was not selling my interest. I only approved the sale of the whole square.
Q. What did you do when Mr. Blout refused to execute the deed or confirm the sale?
A. I then told Mr. Dyer as long as Mr. Blout did not wish to sell and he felt that he held me responsible for it that I would give him all my property to sell, on which I had given an option to others for a certain length of time, and give him all the profits that might be derived from those sales.
Q. Did you meet Mr. Maddox subsequently?
A. I met Mr. Maddox—I do not know what time it was. I think it was——

58 Mr. MADDOX: It was a few days before the bill was filed.
The WITNESS: Mr. Maddox told me that he was retained by Mr. Cochran to bring a suit against me and the other owners of the square 980 for a specific performance of the contract.

By Mr. TOBRINER:

Q. What was said about conveying your interest at that time?
A. Mr. Maddox and I went up to see Mr. Blout to try and get Mr. Blout to agree to sell his interest. Mr. Blout was not in, but Mrs. Blout stated that she thought that her husband had gone down

to the post office. When we got there Mr. Blout came out. Mr. Blout refused to give a deed to Mr. Cochran for my interest, but was willing to transfer it if I so desired.

Q. What did you tell Mr. Maddox then?

A. I told Mr. Maddox that rather than have any lawsuit about the matter I would sell my interest. Mr. Maddox told me that if I would come to Mr. Cochran's office the next morning he felt almost sure that the sale could be made of my interest. I thereupon promised Mr. Maddox that I would be there the next morning with my papers, and I said that they were in the safe deposit company. After leaving Mr. Maddox I called upon my lawyer, Mr. Leon Tobriner, and he advised me that if I did not desire to sell not to do so. I thereupon telephoned to Mr. Maddox not to do anything in this matter until he saw me.

Q. What did you mean by not to do anything in that matter?

A. I meant that I would not meet him at Mr. Cochran's office tomorrow morning until I had seen him. I gave him to understand that I would not be at Cochran's office the next morning with my papers, under the advice of my counsel.

Q. Was that the first time that your individual interest was discussed?

A. Yes, sir; to the best of my knowledge. I do not know of any other time that I was ever asked to convey my interest.

Q. How long a time elapsed between the time when you gave Mr. Dyer a list of these properties and the time when he ap-
59 proached you with respect to the sale of two hundred feet square?

A. It was about 8 months.

Q. Had you had any conversation whatsoever with Mr. Dyer with respect to square No. 980 or any of these other properties during that time?

A. I had not.

Q. Did you tell Mr. Dyer that you would not sell two hundred feet square?

A. I told him, so far as I was concerned, I would not sell a portion of the square, but to see the trustees and if they were willing to sell I would not stand back; that I would not stand back, but whatever they agreed to do I would agree to *to* do.

Q. Was it not upon the same condition that you signed this approval of sale?

A. It was on the same condition that I signed this, because when he came to me with respect to the sale of square No. 980 I refer-ed him, as I had done in the other, where only a portion of the square was at stake, to the trustees.

Q. Mr. Dyer says that you did not tell him that you only had an interest in square No. 980, and that you allowed him to believe that you owned the whole square; is that so?

A. It is not so.

Q. What did you tell him?

A. I told him that I only had an interest in that square, just the

same as I told him that I only had an interest in other squares in which I was interested.

Q. Did Mr. Dyer send you a letter similar to the one which he addressed to Ryon and Tracy on September the 26th?

A. I received on the following morning a letter through the mail. It was on my desk the next morning when I came. The substance of it was the same as the one I had signed the previous afternoon.

Q. Is that the letter (handing the witness the letter)?

A. That is the letter I received.

Mr. TOBRINER: I offered this letter in evidence.

The above mentioned is filed herewith, marked Exhibit
60 J. L. No. 1, and is in the words and figures following, to wit:

EXHIBIT J. L. No. 1.

J. T. Dyer, real-estate broker, 1304 F street N. W.

Loans negotiated; property sold and exchanged; rents collected; fire insurance; notary public.

WASHINGTON, D. C., *Sept. 26th*, 1889.

Mr. Julius Lansburgh.

DEAR SIR: I have sold to George W. Cochran, Esq., your square 980 for 28 cts. per sq. ft., ⅓d cash, balance in 1, 2, and 3 years, 6 per cent., all taxes to be paid to Nov. 30, '89; title to be good and property free from all incumbrance. I have rec'd a deposit of $300 to bind the sale.

Very truly, &c., J. T. DYER.

By Mr. TOBRINER:

Q. Had Mr. Dyer shown you a letter addressed to Ryon and Tracy before you received this letter?

A. He had.

Q. When?

A. On the afternoon before I received that.

Q. On the afternoon of the day before you received this?

A. Yes, sir; on the afternoon of the day before I received this letter.

Q. Did he give you any reason why he had addressed a letter to Ryon and Tracy?

A. He did not give me any reason, but I supposed by that that he knew Ryon and Tracy were one of the trustees, because I had referred him to the same parties in regard to the sale of a part of the square on the day before, which showed, to my mind,
61 plainly that he must have known that I was not the entire owner of square No. 980.

Q. Did Mr. Dyer report to you what Mr. Blout had said about that sale?

A. To the best of my recollection Mr. Dyer told me that he had seen Mr. Blout. I do not know when it was. It may have been a month after that; but I can't recollect that. He said that Mr. Blout would see about it and he asked me to see Mr. Blout and see what I could do with him.

Q. Was there at any time during the month of September or October a tender made to you of the purchase-money of square No. 980?

A. There was not.

Q. Or for your individual interest?

A. There was not.

Q. This conversation with Mr. Maddox, with respect to your making an arrangement to convey your individual interest to Mr. Cochran, took place when?

A. I don't know the day.

Q. About how long before the filing of this suit?

A. I know it was between the time that the sale was placed on record and the filing of the bill. It was between October the 7th and November the 14th.

Cross examination.

By Mr. MADDOX:

Q. Mr. Lansburgh, did you put this property in the hands — anybody else besides Mr. Dyer for sale?

A. I told other real-estate men about it, just the same as I did Mr. Dyer.

Q. Who were they?

A. I don't know of any other one but John F. Waggaman.

Q. What price did you give him on the property?

A. I gave him a price several months after that of thirty cents.

By Mr. TOBRINER:

Q. After what?

A. After the time that I gave it to Mr. Dyer.

By Mr. MADDOX:

62 Q. When did you put this in Waggaman's hands for sale?

A. It was about April.

Q. What price did you put on it?

A. Thirty cents a foot.

Q. Did you put it in the hands of anybody else for sale?

A. Not to my recollection.

Q. Did you put it in the hands of Mr. Wimer for sale?

A. I may have mentioned it to Mr. Wimer also.

Q. About what time?

A. That I could not say.

Q. At what figure?

A. I don't know.

Q. Did you not give it to him at twenty-five cents?

A. I may have. I can't say.

Q. You don't know whether you put that into Mr. Wimer's hand before or after you gave it to Mr. Dyer?

A. I do not. I recollect now of having spoken to Mr. Wimer about it the same as I did to Mr. Dyer.

Q. Did you make him up a list of your property?

A. I gave him a list, I think; I am not sure; he would know better than I would about that.

Q. Did you tell him whether or not you owned it in connection with a syndicate or as an individual?

A. I must have told him that I only owned it as a part owner, for the reason that I have always said that to everybody I mentioned this property to.

Q. Did you say that to Waggaman?

A. Yes, sir.

Q. Did anybody else have the property for sale that you know of?

A. That I don't know.

Q. Do you know whether Mr. Blout gave it to anybody?

A. I do not.

Q. Do you know whether Mr. Clark had given it to anybody?

A. I heard through Mr. Dyer that Mr. Clark had given it to others. I do not know to whom.

Q. You do not know that Mr. Clark gave it to Weller and Repetti at 25 cents a foot?

63 A. I do not. The only thing that I do know is that Weller and Repetti telephoned over and asked me whether 25 cents was the lowest that square 980 could be bought for. That was over a year ago, I should judge. I don't know just the time, but I recollect that message coming over the wire.

Q. Was there not some talk amongst you about accepting the offer which Weller and Repetti had made of 25 cents?

A. Yes.

Q. When was that?

A. That was before this time.

Q. That was during the summer?

A. I don't know exactly when it was, but I know it was before this time.

By Mr. TOBRINER:

Q. Before what time?

A. Before I gave it to Mr. Dyer at 28 cents.

By Mr. MADDOX:

Q. That was before you gave it to Mr. Dyer at all?

A. Yes, sir. That is my recollection. I do not know anything about what was given to Weller and Repetti, because that did not come from me. I cannot tell what Weller and Repetti did or what Clark did. I can only tell you what I did.

Q. Did you not know at the time that Mr. Clark had placed this property in the hands of Weller and Repetti at 25 cents a foot?

A. I did not.

Q. You did not?

A. I did not know it.

Q. You did learn that Weller and Repetti had offered 25 cents a foot for it?

A. No. I don't know that they had offered that. They asked me whether I would take 25 cents, and I told them that I would see the other members of the syndicate and see whether they would take it.

Q. Did you see them?

A. I saw one of or two of them.

Q. Whom did you see?

A. I saw Mr. Ryon and I saw Mr. Blout, but I really do not know what they said about that matter, whether they accepted it or rejected it.

Q. You do not remember about that?

64 A. I don't remember that.

Q. What arrangement did you have with the owners of other interests about the sale of this property before you put it into the hands of Messrs. Wimer, Waggaman, and Dyer?

A. I made no arrangement. I understand that Messrs. Ryon and Tracy stated that they had a building association that wanted to give a certain price for it.

Q. That is not an answer to my question. I want to know what arrangement you had with the owners of the other interests about a sale of this property before you put it into the hands of Wimer, Waggaman, and Dyer.

A. I don't know of any arrangement. I may have spoken to Ryon and Tracy about it. I do not recollect of having made any arrangement.

Q. Did you have any conversation with Mr. Blout and Mr. Clark about it?

A. Yes, sir.

Q. Before you put it in the hands of Dyer for sale?

A. Well, we casually spoke of our interest in that one square and the possibilities of its advancing, &c. I will state that I was never authorized to sell and no arrangement was had between us to sell at any certain price.

Q. Did you tell Mr. Dyer when you put your interest in his hands for sale that you had no authority from these co-owners to sell?

A. I gave him to understand that I thought 28 cents a foot would be a price that the syndicate would be willing to sell for.

Q. Did you tell him that you had not consulted with the other members of the syndicate about it?

A. Why, we had always been in consultation about this square, and from what I could learn from them I could take it for granted that 28 cents a foot would be the price they would be willing to sell for.

Q. Did you tell that to Mr. Dyer?

A. I told that to Mr. Dyer.

Q. That the other members of the syndicate had consulted with you about this square and you would be willing to take 28 cents a foot for it?

65 A. I told him that, from what I could find out from the syndicate, they were willing to sell for 28 cents a foot.

Q. When did you find this out from the syndicate?

A. I stated that I found it out in casually speaking to them about our mutual interest in that one square—just the same as I spoke to other members of other syndicates about other squares.

Q. When did you have any talk with Mr. Blout about this? Did you ever have any formal talk?

A. We never had any talk regarding the actual sale of the property. The only talk we had was a casual conversation with regard to the prospects of this piece of property.

Q. Did you ever advise Messrs. Blout and Clark that you had put it into the hands of these three real-estate agents for sale?

A. I did not.

Q. Then they knew nothing about it?

A. They knew nothing of it.

Q. They did not know that Mr. Dyer had it for sale?

A. They did not.

Q. Or Mr. Wimer?

A. No, sir.

Q. Or Mr. Waggaman?

A. No, sir; nothing at all.

Q. You do not know whether Mr. Blout put it in anybody's hands for sale?

A. That I don't know.

Q. Did you ever tell Mr. Blout that you had put it in the hands of these gentlemen for sale?

A. No; I know that I did not tell him.

Q. You never told him?

A. No.

Q. Then you assumed the authority to sell this square which you did not have?

A. I did not assume any authority at all. I told Mr. Dyer at the time that I only had an interest in this, and I thought that the syndicate would take 28 cents a foot for it. That was my very language.

66 Q. Did you tell that to Mr. Wimer?

A. I don't recollect of telling that to Mr. Wimer.

Q. Did you tell that to Mr. Waggaman?

A. No; I don't know that I said that to Mr. Waggaman; but, as I gave these people the different pieces of property that I owned, totally or in part, I mentioned the fact that I only had an interest in this, and that such and such would be the price they could get a certain piece of property for, so far as I was concerned. On the property I owned wholly I only stated the price that I would take at the time.

Q. What led you to believe that Mr. Blout would take 28 cents?

A. For the reason that we had, as I said, in casually speaking of this piece of property—I was satisfied they would take 28 cents a foot for the reason that at the time the offer was made of 25 cents they thought the price was to- low, and that it ought to bring 30. I will

state right here, to the best of my recollection, an offer had not been made from Weller and Repetti of 25 cents a foot. A message came over the wires asking whether 25 cents would be taken for it, but they never made that offer, or, at least, I never heard anything from Weller and Repetti about it.

Q. You did not have a meeting, then, and decline that offer?

A. We never had a meeting. We never have had a meeting since we have had the property.

Q. Did you ever have a conversation with Ryon and Tracy, in March or April of 1889, about the sale of the square at 23½ cents a foot?

A. In March or April of what year?

Q. Of 1889.

A. I don't recollect that. On the contrary, I know there was a 23½-cent offer made, which was refused.

Q. Was that offer submitted to Mr. Blout?

A. That I don't know.

Q. Did not Mr. Ryon advise you that he had offered 23½ cents a foot and requested you to see Mr. Blout and Mr. Clark and ask them if they would accept that offer?

A. I believe I did; yes, sir.

67 Q. Did you not inform Mr. Ryon that they would accept it?

A. No, sir; I notified Mr. Ryon that 25 cents would be the lowest price that would be taken for it.

Q. Did you notify Mr. Ryon that Clark and Blout and yourself would sell out your interest at 23½ cents?

Mr. TOBRINER: I object to that as immaterial.

The WITNESS: I don't recollect anything of that kind; no, sir.

By Mr. MADDOX:

Q. You don't remember that?

A. I do not.

Q. Did you have any interview with Mr. Blout or Mr. Clark after that 23½ cents offer was made?

A. Just casually speaking about our interest. Whenever I met them they would ask me what our prospects in square 980 were, and I would ask them.

Q. Were you talking about this distinct offer of 23½ cents per foot by a client of Mr. Ryon's? You say he told you of it and asked you to see Mr. Blout and Mr. Clark. What did Mr. Blout say when you saw them with regard to that offer?

A. I don't recollect that any offer of 23½ cents a foot was made, but from having seen Mr. Clark and Blout so often and speaking to them about different prices, I could not state whether they accepted the 23½ cents a foot offer or rejected it. I know that the sale never went through at 23½ cents a foot, because I know that sale was not made and I never received my share of it.

Q. You know the sale was not made because it was not made. Did you not report to Mr. Ryon that Clark and Blout and yourself were willing to sell at 23½ cents at that time?

A. I don't recollect that.

Q. You don't remember that?

A. I do not recollect it.

Q. After this sale was made by Mr. Dyer did you have any conversation with Mr. Ryon?

A. Yes, sir; lots of them.

Q. What was the purport of it?

A. The purport of it was that Mr. Ryon said that he could not afford to do without selling his *pro rata* interest here; that
68 he was in the real-estate business and it would look very badly for him if he did not sell if Mr. Cochran wanted his interest; that as Mr. Cochran had not come up to see him he was going down there and see Mr. Cochran and give him until 12 o'clock the next day to make up his mind to pay for his interest in the property, and if he did not do it he would call the thing off. He advised me to do the same. I thereupon called upon Mr. Cochran and Mr. Cochran kind of waived me off, stating that he had placed it in the hands of his attorney.

Q. Did you not then tell Mr. Ryon that you could not see why the others refused to sell at 28 cents a foot, as Clark had offered to sell his interest to you a few days before at 25½ cents?

A. I stated that clearly at Mr. Ryon and Tracy's office, that a couple of days before this sale was consum-ated Mr. Clark had said to me: You can buy my interest if you want it at 26 cents a foot. I did not answer him at all, because I did not want his interest at 26 cents a foot. Now, I do not know whether he was joking when he made that remark or whether he made it in earnest, only I did not take him up. It must have been a couple of days before this sale was consum-ated, for the reason that when Dyer told me about it I told him about the conversation I had with Mr. Clark.

Q. After the Dyer sale did you have any talk with Blout and Clark about conveying the square?

A. I went to them several times at the solicitation of Mr. Dyer and on account of my own desire to close the matter up.

Q. Did you urge them to accept the offer?

A. If they were satisfied I was satisfied. But they told me the price was entirely too low and that they could get more money for it, and they positively refused to sell.

Q. You do not answer my question. Did you not recommend to them to accept the offer?

A. I did not.

Q. Did you have any talk with Ryon and Tracy about the acceptance of it?

69 A. Ryon and Tracy told me that they were going to offer their interest to Mr. Cochran, as I stated before.

Q. When you and I saw Mr. Blout at the post office together did you not then say to me that it was best for all hands to join in a deed and settle the matter?

A. I may have said that. I do not recollect it, but I may have said it.

Q. Then when Mr. Cochran offered to take your interest separately

and leave Blout and Clark out of the question why did you refuse to sell your interest to him?

A. For the reason that if the property had gone down instead of up Mr. Cochran would not have bought the property, and as long as I was not compelled to sign away my interest, not having sold an interest, I did not see why I should sell.

Q. Would it have made any difference to you whether Mr. Clark or Mr. Blout sold his interest?

A. It would have made no particular difference to me.

Q. It made no difference whatever?

A. It made no difference to me at that time; no. I may state right here that I was very desirous of getting out of the syndicates that I was in, because they gave me a good deal of trouble and annoyance, and rather than have a lawsuit, as you said you were going to bring suit, I was satisfied to sell my interest and get out, even if I lost money by it.

Q. Then why did you not do it?

A. I do not see what—I refuse to answer that question.

Q. Who made up this list that you gave to Mr. Dyer?

A. I made up that list.

Q. Did you write out the different pieces of property yourself?

A. I had a book in my hand and either I wrote it down or he wrote it down. I know I read it off the book that I had. I do not know whether I put it down or whether he did.

Q. Did that list show which property you owned individually and which in connection with others?

A. I stated that I could not tell you.

70 Q. You do not know?

A. I don't know.

Q. This property was sold by Mr. Dyer on the 26th of September, 1889. Did he not come over to your store that evening and tell you that he had sold square 980 at 28 cents a foot?

A. He showed me that letter to Ryon and Tracy.

Q. You did not see him before that?

A. No, sir; I did not.

Q. He did not come into your store on the afternoon of the day of the sale?

A. He did not.

Q. How many days after the sale was it that you signed that letter to Ryon and Tracy approving the sale?

A. It was that same day, the same afternoon, to the best of my knowledge.

Q. On the afternoon of the 26th?

A. On the afternoon of the 26th. I do not think there was a half hour elapsed between the time that he first showed me the letter and my approval of it.

Q. You gave this property to Mr. Dyer for sale in January. Did you notify him in the meantime that the syndicate would require an advance in the price you then gave him?

A. I did not. I will state the reason why I did not do that: be-

cause I really did not know that Mr. Dyer had it. I had forgotten all about having given the property to him.

Q. When you referred Mr. Dyer to the trustees whom did you mean?

A. I meant Ryon and Tracy and Mr. Blout. I was under the impression that Ryon and Tracy were trustees and Mr. Blout. I did not know that Mr. Ryon, of the firm of Ryon and Tracy, was the trustee. I thought they both were trustees.

Q. When Mr. Dyer came back and reported his conversation about having to divide commissions with Ryon and Tracy did you not ask him why he did not divide commissions with you?

A. I did not. I told him that I was going to see Ryon and Tracy and see that I got some of those commissions.

Q. What reason did you give Mr. Dyer at that time for not
71 yourself going to see Mr. Blout?

A. I said that I was too busy.

Q. When did you tell him that Mr. Blout was a part owner first?

A. I told him at the time when he first came to me with an offer for a part of the square. I told him that he would have to see the trustees.

Q. Did you tell him then who were the trustees?

A. I did.

Q. You spoke in your testimony about Mr. Dyer having more influence with Mr. Blout than you would have. What do you mean by that?

A. It was just the other way. He said to me that I had better see Mr. Blout, and that I would have more influence than he would.

Q. Did he not tell you that he had never seen Mr. Blout and did not know him?

A. I do not recollect of his saying so.

Q. When you and I had the conversation about this affair or about this sale, you agreed on your part to sell your interest on the terms he indicated, did you not?

A. Rather than to have a lawsuit I did. You stated to me that you were going to bring suit against me and I did not want to have anything to do with the lawsuit. I concluded rather than to have a suit that I would sell my interest. You thereupon told me if I would meet you at Mr. Cochran's office——

Mr. MADDOX: You have already stated that once.

Mr. TOBRINER: Let the witness proceed. Go on with your answer, Mr. Lansburgh.

The WITNESS: I thereupon asked you to meet me at Mr. Cochran's office the following morning. You felt sure that a sale would be made of my interest in it to Mr. Cochran, and that he would give me my *pro rata* share; but you stated at the time that, owing to the one-third payment being made in cash and the balance in one, two, and three years, you did not know how to work it, and you thought that if a discount was to be taken off I could receive all

cash. We then agreed that I would take off one per cent.
72 Then I said: Now, if you can get through that sale without my losing that one per cent. I would like it, as I do not care about losing it. That is the only conversation that I recollect of having with you. I then promised that I would be there the next morning with my papers. I had to get them out of the Safe Deposit Company, and I said that I would meet you there, at Mr. Cochran's, the following morning at 10 o'clock. After leaving you I went to my lawyer and stated the case fairly to him, and he advised me that if I did not want to sell I should not do so.

By Mr. MADDOX:

Q. Now, let us go back to this conversation. I want you to answer the question. Did you not agree with me in that conversation to sell your interest on the terms indicated in the Dyer contract?

A. Yes; I want to say——

Q. Please answer yes or no?

A. One minute now. I would like to say why I did. You told me that unless I did there would be a lawsuit. I told you that I did not want any lawsuit and rather than to have one I would be willing to sell. That is my answer to your question.

Q. After you and I had agreed that you should accept 28 cents a foot for your portion, did I not suggest to you that there might be complications in paying you one-third cash and having the balance secured by a deed of trust in one and two years, as indicated in that contract?

A. You did.

Q. Did I not then state to you that Mr. Cochran was willing to take your interest at 28 cents and comply with his terms of sale?

A. I did not understand it that way.

Q. Then did I not tell you that I would recommend to Mr. Cochran, rather than to have complications, that he should pay you all cash on the property for a proper discount?

A. Yes; you did that.

Q. Then the only thing left between you and me in that conversation was whether or not Mr. Cochran would comply with the terms of sale or pay all cash?

73 A. At that time, as I understood it, you led me to believe that Mr. Cochran would take my interest at the price named, but you did not say positively that he would, and for that reason you told me to meet you the following morning at Mr. Cochran's office, and that he would very likely settle the matter there.

Q. Did I tell you from the start—that is, from the time that we started from your store to go up to see Mr. Blout, and as we walked down 7th street towards the Post Office—that Mr. Cochran would take your interest independently of any other?

A. I did not so understand it. I knew that it would ultimately come to that, but I did not understand that you had power from Mr. Cochran to make that direct offer to me.

Q. I did not, as you remember, do that.

A. I do not recollect that. You may have done it.

Q. Was not the only thing left between you and me the question as to whether or not Mr. Cochran should pay all cash?

A. It was not, because I did not see how I could have managed it any other way. How could it have been managed?

A. I did not want to take a second de-d of trust on the property.

Q. Do you remember of telling me not to suggest to Mr. Cochran a discount for cash?

A. Yes.

Q. Do you remember of telling me not to suggest that he should make a deduction of one per cent. in consideration of cash?

A. I remember that fact.

Q. And that probably he would be willing to pay all cash?

A. I do. I admit it.

Q. From the 26th day of September, for about a month, negotiation was going on looking to the securing of Mr. Blout's and Mr. Clark's consent to the Dyer sale, were they not?

A. Yes, sir.

Q. Do you know what time it was that you, Mr. Dyer, and Mr. Blout met at Ryon's office?

A. It must have been the day after this paper was filed.

74 Mr. TOBRINER: What was filed? Do you mean when this receipt was placed on record?

The WITNESS: Yes, sir; it must have been the day after that.

By Mr. MADDOX:

Q. Negotiations were practically going on all the time until I saw you at your store?

A. I never went there much. I only went about twice to see Mr. Blout to get him to sell, as I said I was too busy and I could not attend to these things. I was just moving into a large store, and it required all of my time and attention.

Q. Your idea was to secure the consent of Mr. Blout and Mr. Clark?

A. Yes, sir.

Q. You and Mr. Ryon attempted to do that?

A. Yes, sir; for the reason that Mr. Dyer insists upon it that I was liable to him for the transfer of this property which I had given to him for sale and for which he had gotten the purchasers, and that it was my duty as a man to see that the sale went through. He placed it in such a way that I felt it my duty to see Blout and Clark and get them to agree to the sale.

Q. You think, then, that Dyer was right about it?

A. No; I do not. Mr. Dyer knew perfectly well that I only had an interest in the square, and he knew when I approved it I only approved it for a part and not for the whole square. He knew at the time that I must have been only a part owner, because the letter he brought to me for signature was addressed to Ryon and Tracy, and that shows that he knew that Ryon and Tracy must have been one of the parties to be consulted before the sale could be made.

The letter showed that Mr. Dyer came to me for my signature, and I referred him to the trustees and told him that I only had an interest in the property, and that I would only approve it after Ryon and Tracy had put their signature to that piece of paper. If I gave that property to Mr. Dyer as a whole, why did he not bring a letter addressed to me? Why did he bring a letter to Ryon and Tracy and get me to approve that?

75 Q. When did you first notify Mr. Dyer who, besides yourself, was interested in that square?

A. I notified him at the time he first made the offer to me, eight months after I gave him a memorandum of the property. He came to me with an offer and said that he thought that he could get thirty-five cents a foot. I then referred him to the parties who owned the property.

Q. That was the first time you told him who, besides yourself, was interested in this square?

A. I gave him the names of the other parties, but I did not say to him particularly each and every member who was connected with it.

Q. When did you give him the names of the parties?

A. I gave him the names of each and every party at the time that he first came to me after the sale.

Q. Prior to that time you only said that you were interested in it jointly with others?

A. Yes, sir.

Q. You did not give him the names of these other parties at all?

A. I gave him Ryon and Tracy's names and Blout's name, because they were trustees.

Q. When did you give those names to him?

A. At the time that I—well, I won't say that, because I may be wrong. I do not know that I gave him the names of the parties at all at the time I made the memorandum for him of the properties that I had for sale.

Q. You have no reason to believe that Mr. Dyer knew who, besides yourself, was interested in this property until the offer was made to buy a part of the square?

A. Well, I will say that I do not suppose that he did.

Q. You are positive that Mr. Dyer did not come over to see you about the sale of the square until he brought you the letter addressed to Ryon and Tracy?

A. That is my firm belief.

Q. When did you have a conversation with Mr. Dyer in which you told him that you had received from Mr. Clark an offer

76 to sell his interest at 26 cents?

A. At the time I approved the sale.

Q. Did you ask whether or not you had not better go and see Clark and buy out his interest—if he would still take twenty-six cents for it?

A. I did not so state it. I will state what I did say if you will allow me. I said to Mr. Dyer that Mr. Clark offered me his interest for twenty-six cents, and asked him whether he thought it would

be right for me to buy up that interest and make the difference between twenty-six cents and twenty-eight cents. Mr. Dyer then told me that he did not think it was right, because the sale had been made. I said, Yes; that I did not think so either. I never made any attempt to get Mr. Clark's interest and never broached the subject to him, and never went near him about it.

Q. When did you first learn that Mr. Blout refused to sell his interest?

A. I could not tell the day; it was after the sale, but I do not know when.

Q. How long afterwards?

A. I could not tell you.

Q. When you learned of it did you go to see Mr. Blout about it?

A. I saw Mr. Blout twice in reference to the sale of this property.

Q. Where did you see him?

A. I saw him once at his place of business and another time, I think, I met him at Lansburg Bros. He positively refused to sell each time.

Q. Did you introduce the subject of conversation?

A. That I don't know.

Q. Can you approximately fix the dates of this meeting?

A. No.

Q. You do not know whether it was before or after Mr. Cochran filed his contract in the record office?

A. I do not like to say; I am not positive.

Q. When did you receive the letter that you have offered in evidence?

A. I received that on the following morning.

Mr. TOBRINER: And on the following morning to what?

The WITNESS: On the following morning of this date.

77 By Mr. MADDOX:

Q. Did you receive that letter on the morning of September 27th?

A. Of September the 27th; yes, sir.

Redirect examination:

By Mr. TOBRINER: Mr. Lansburgh, when you told Mr. Dyer that you thought the 28 cents would be accepted for the square No. 980, how did you arrive at that price?

A. I arrived at that price from the different conversations we have had prior to that time in reference to the sale of the square.

Q. Then it was only a matter of opinion on your part?

A. It was only a matter opinion on my part.

Q. I want to ask you whether it was not the understanding between you and Mr. Dyer when he took charge of this list of property that he would report any offer to you before making a sale.

A. There was no terms mentioned at all. In fact I had forgotten that I had given Mr. Dyer the list, for I had never spoken to him about it from the time I gave him the memorandum till the first

time he came to me with a kind of a half offer of thirty-five cents for part of the square; that was the first intimation I had that he had any of this property for sale.

Q. At the time you placed this property on his book did you give him an- authority to close the sale?

A. I did not.

Q. You say there were no terms mentioned?

A. There were no terms mentioned whatever.

Recross-examination.

By Mr MADDOX:

Q. Do you know why Clark changed his mind about selling this square when he had offered it to you on the day previous at twenty-six cents a foot?

A. He was sitting in my store with Blout and we were talking about square No. 980.

Q. With Mr. Blout?

78 A. Mr. Blout happened to be there and he said, You can buy my interest at twenty-six cents a foot. I paid no attention to it, for I didn't want it. I was trying to get out of syndicates altogether and not to get in any more. That is all that passed between us.

Q. Was anything said at that time by you to Mr. Clark with regard to your having given this property to real-estate men for sale at twenty-eight cents?

A. I did not say a word about it.

Q. You never told them?

A. I never told them that I had given it to any one.

Q. Then in giving this property to an agent for sale you were acting entirely without authority?

A. I don't understand what the rules of the real-estate business are, but when I tell a man I have only got an interest in property, before he closes I should think he would come to me and ask me whether I had the power to sell.

Q. I am not asking you what real-estate men do. I am asking you whether when you put this property in the hands of Wimer and Waggaman and Dyer for sale you acted without authority.

A. I acted with authority in regard to my own property; but when I tell an agent that I am only a part owner of it, it was certainly his place to find out whether I had authority to sell before closing, for, as I have sworn here, I told him every property I was interested in partly and everything that I owned wholly, and consequently no real-estate man is going to go to work on such instructions and sell a piece of property without first coming to me.

Q. When you offered this property for sale at twenty-eight cents a square foot; ou did so without any authority from any one?

A. I had no authority to sell, nor did I place it in the hands of any real estate — on this condition. I only told them that I was a part owner. I want that distinctly stated here, because I said

plainly to each and every one of these real-estate men the
79 price of property that I owned. I made it a point always to do so.

Q. You did not say to these real-estate men that you had no authority to sell at twenty-eight cents?

A. I don't recollect of saying that, but I should think he might have——

Q. Never mind what you think.

Mr. TOBRINER: He has a right to explain a question.

Mr. MADDOX: He has no right to think about this question.

By Mr. MADDOX:

Q. When Mr. Dyer notified you of this sale, did you advise him to see the other parties and tell them that you were perfectly satisfied?

A. Yes, sir; I can answer that in my own way.

Q. No, sir; answer yes or no and then explain it.

Mr. TOBRINER: Answer the question just as you please.

The WITNESS: Ask the question.

By Mr. MADDOX:

Q. When Mr. Dyer notified you of this sale, did you advise him to see the parties and to say to the parties that you were perfectly satisfied? I want an answer yes or no, and then you can explain it if you want to.

A. I told him to go and see the trustees and get their consent and that I was satisfied to do whatever they agreed to do, as I had already stated about the other sale.

Q. You did not tell him, then, to say to the other parties in interest that you were perfectly satisfied with the sale?

A. I told him that I was satisfied if they were.

Q. I would like you to answer the other question, whether you told him to say to the other parties in interest that you were perfectly satisfied with the sale?

A. I don't recollect that.

JULIUS LANSBURGH.

Subscribed and sworn to before me this 17th day of May, 1890.

WM. HERBERT SMITH.

80 The further taking of these depositions thereupon adjourned until Monday, March 10, 1890, at 2 o'clock p. m.

WASHINGTON, D. C., *March* 10, 1890.

Met pursuant to adjournment. Adjourned by consent, subject to notice.

WASHINGTON, D. C., *April* 22, 1890—3 o'clock p. m.

Met pursuant to agreement at the office of Leon Tobriner.

Present on behalf of the complainant, Mr. Maddox; present on behalf of the defendant-, Mr. Tobriner.

Whereupon ISAAC L. BLOUT, a witness of lawful age, called by and on behalf of the defendant-, having been first duly sworn, is examined—

By Mr. TOBRINER:

Q. Where do you reside?

A. I reside at No. 710 7th street N. W.

Q. What business are you engaged in?

A. In the millinery-merchandizing business.

Q. You are one of the defendants in this case, are you not?

A. Yes, sir.

Q. Did you ever authorize Mr. Lansburgh to offer for sale square No. 980?

A. I have not.

Q. Do you know Mr. Dyer?

A. I do not. I met him once and, not knowing him, he handed me his card and said to me that his name was Mr. Dyer. I would not know the gentleman if I were to see him now, I don't suppose.

Q. Where was this?

A. It was out in the northeastern section of the city, near the corner of Second and, I think it is, Massachusetts or New York avenue; New York avenue.

Q. Northwest?

A. Yes, sir; in the northwest.

81 Q. When was it?

A. As near as I can recollect, it was in the latter part of September of last year.

Q. Of 1889?

A. In 1889. I don't know the exact date.

Q. Will you state how you happened to meet him and the circumstances of your meeting.

A. I was up in that section of the city on some business. It was in the evening, and I was on my way home, near the place stated, and some one drove up in a buggy and called me by name. I stopped. He said, I want to see you a moment. With that he put his hand in his pocket and handed me his card. It was a card with the name of Dyer and some one else on it.

Q. Was it Hufty and Dyer?

A. I disremember now; I did not pay much attention to it. He said, My name is Dyer; I have bought square No. 980 at twenty-eight cents. Says I, Upon whose authority?

Q. Did he say that he had bought or sold square 980?

A. He said he had sold it, I think. I said, Upon whose authority? He said, Upon the authority of Mr. Julius Lansburgh. I said, That is news to me. Mr. Julius Lansburgh has no authority to sell without my consent, I being the trustee, and he has not consulted me anything about it. He said, O, well; that's all right; I suppose you are satisfied. Says I, No, sir; I am not satisfied. Then I left him.

Q. Was that the only conversation that you ever had with Mr. Dyer?

A. That was the only time I ever saw him to my knowledge.

Q. Did he ever present to you any paper——
A. No, sir.
Q. In terms approving the sale made by him of square No. 980?
A. I have never seen Mr. Dyer on business since that evening, to my knowledge, and if I were to see him I don't believe I would know the gentleman.

Cross-examination.

By Mr. MADDOX:

82 Q. What interest do you own in this square?
A. I have a one-sixth interest in it.
Q. What interest did Julius Lansburgh have in it?
A. I could not tell you. I know he had a one-sixth interest and he may have had two-sixths.
Q. What interest had Clark?
A. He has a one-sixth interest.
Q. What relation is Clark to you?
A. None whatever, except that he is married to his present wife whom I raised from infancy. She was not a child of mine and yet I raised her.
Q. When you had this conversation with Mr. Dyer and separated from him did you not tell him that you would see about it?
A. No, sir.
Q. You did not?
A. No, sir. He asked me the question if I was satisfied, and I told him positively no.
Q. Had any offers been made to you for the purchase of this square during the summer of 1889?

Mr. TOBRINER: I object to the question as not being responsive to the examination-in-chief.

A. To me personally?
Q. Yes.
A. Yes, sir.
Q. Who made them?
A. Mr. A. Fisher.
Q. Abraham Fisher?
A. Yes, sir.
Q. Who gave the property to him for sale?
A. I don't know, sir.
Q. Was any proposition ever made from Weller and Repetti?
A. Not to me.
Q. Was information conveyed to you in any way that the property had been put into the hands of Weller and Repetti for sale by Mr. Clark?
A. No, sir.
83 Q. You never heard, then, of the 25-cent offer made by Weller and Repetti?
A. No, sir. I was consulted once about an offer of 24 cents which I refused.

Q. You refused it?
A. Yes, sir.
Q. Was the property in the hands of Ryon and Tracy for sale?
A. Not that I know of.
Q. Was any offer made to you by Ryon and Tracy through Lansburgh or by anybody else or by custom of Ryon and Tracy for 23½ cents a foot about July, 1889?
A. No, sir.
Q. Did you and Mr. Lansburgh and Mr. Clark ever have any conversation in regard to this square and the price to be fixed upon it?
A. We had a conversation once. I could not tell you exactly the time, but it was while we were up in his store making some purchases. He said, I believe that we could get 33 cents for a portion of that square. I said, I will not consent to sell a portion of it.

By Mr. TOBRINER:

Q. Who said this?
A. I did.
Q. Who said that you could get 32 cents for a portion of it?
A. Julius Lansburgh said that. I think possibly Clark was there at the time.
Q. Lansburgh did the talking?
A. Lansburgh says, I can get an offer or I have an offer of 32½ a foot for a portion of square 980. I disremember which it was. I answered him then, I would rather not sell a portion of it. If we are to sell it I would rather sell it as a whole. Then he dropped it and said no more about it.

By Mr. MADDOX:

Q. Did you know that Mr. Lansburgh had put this property in the hands of real-estate men for sale?
A. I did not.
Q. Were you present at a conversation in Mr. Lansburgh's store some time early in September, prior to this contract of sale to Cochran, when Mr. Clark offered to sell his interest to Lansburgh for 26 cents?
A. No, sir.
84 Q. You did not hear that conversation?
A. No, sir.
Q. You were not present?
A. I was not there and know nothing of it.
Q. The first that you knew of this sale was from the conversation that you have detailed with Dyer?
A. Yes; that was the first intimation I had of it.
Q. Did you afterwards hear from Mr. Lansburgh about it?
A. I went to see Mr. Lansburgh the following afternoon. I said, Julius, who gave you authority to sell that square, and I related the circumstances of the conversation. I said, Who gave you authority to sell? He said, Excuse me, I did not sell. I sold with the condi-

tion that you are satisfied. You know very well, says he, that I can't sell unless you give your sanction.

Q. Did Mr. Lansburgh advise you to sell to save a lawsuit and trouble?

A. No, sir.

Q. He did not?

A. No, sir.

Q. He never saw you about this sale afterwards?

A. No, sir.

Q. Did you meet Mr. Lansburgh and Mr. Ryon at Ryon's and Tracy's office with regard to a settlement of the controversy?

A. I was asked to go there; yes, sir.

Q. Did you go?

A. I did.

Q. What transpired there?

A. The only thing that I heard that transpired there was that there was some talk with regard to affecting a settlement. What shape or form it took I never was told. I answered that I had nothing at all to settle.

Q. And that is all?

A. And that is all.

Q. You never saw Mr. Lansburgh about it?

A. I saw Mr. Lansburgh frequently, but not about that.

Q. Was it never mentioned afterwards?

A. Not as I know of; no, sir. I might have asked him possibly how his lawsuit was progressing or something like that, but nothing further.

Q. Did you never agree at all amongst yourselves or with Mr. Lansburgh at any time upon the price at which the whole
85 square might be sold?

A. No, sir.

Q. You never agreed to accept any offers submitted to you by Mr. Lansburgh or by anybody else?

A. Yes.

Q. What offer was that and who submitted it prior to this Dyer contract?

A. I don't know whether it was prior to this contract or after it. Mr Ryon came to me and he said, Blout, I think I can get thirty cents a foot for that ground. I answered him, Mr. Ryon, I would rather not sell even at that figure, but to show you that I am not headstrong I will consider it. I said, I don't know as it is just for me to keep you men out of your money and I will consider it. I did consider it and within a day or two afterwards went down to Mr. Ryon's office and said, Ryon, I believe I will consent to sell at thirty cents. He said, No, sir; I will not sell now for less than forty cents.

Q. When was that?

A. I could not tell you the exact time, but I think it was prior to this transaction or it might have been afterwards. He told me that he could get an offer of thirty cents and I told him I would consider it. After I considered it and went down and told him that I was

willing to sell at thirty cents he answered me, No, sir; I will not sell now at less than forty.

Q. You did not know, then, that Mr. Clark had put this property in the hands of Weller and Repetti for sale?

A. No, sir; I never knew that any one had put that property on sale.

Q. The title, I believe, is vested in you as trustee?

A. Yes, sir.

Q. And you gave certificates to these different holders as to the interests owned by them respectively?

A. Yes, sir.

Q. Do you know what certificates you have given?

A. I do not.

Q. Can you find that out in any way?

A. I don't know how to find it out.

Q. Did you issue one to Mr. Clark?

A. It is possible; I could not say for sure.

86 Q. He is a beneficial owner of a one-sixth interest, is he not?

A. Yes, sir.

Q. You own a one-sixth interest?

A. Yes, sir.

Q. And Mr. Julius Lansburgh owns a third interest?

A. I know that he owns a one-sixth interest, but whether he owns a third or not I don't know. Let me recall that answer. I can testify to that, because I know what proportion of the taxes he pays. He paid one-third of the taxes.

Q. You have issued to Lansburgh a certificate of his one-third interest?

A. I don't know whether I have or not.

Q. Can you find that out for me?

A. I can ask Mr. Lansburgh; that is the only way I can find out.

Q. I wish that you would find it out and what that certificate is.

A. Yes, sir.

ISAAC L. BLOUT,
By the Examiner by Consent.

Subscribed and sworn to before me this — day of ——, 1890.

——— ———.

Counsel for the defendant thereupon announces his testimony closed.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Wm. Herbert Smith, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me from the oral statements of the said witnesses at the time and place mentioned in the

caption thereof; that the said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching said matters in controversy; that the said depositions were thereupon read over by the said witnesses and by them subscribed.

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I further certify that I am not of counsel or in anywise interested in the result of this suit.

WM. HERBERT SMITH,
Examiner in Chancery.

Fees, $30.00, paid by defendant.

WM. HERBERT SMITH, *Examiner.*

Entry in Order Book 11, *Page* 143.

COCHRAN *vs.* BLOUT *et al.* } S. Maddox. 12133. L. Tobriner.

The clerk will please enter upon the calendar for trial.

SAM'L MADDOX.
J. W. GREEN.

Calendared as ordered.

BY THE CLERK.

'90, 5, 26.

Motion for Leave to File Amended Bill.

Filed 18, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Plaintiff, *vs.* ISAAC L. BLOUT, Trustee, *et al.*, Defendants. } In Equity. No. 12132.

And now comes the plaintiff, by his solicitor, and moves the court for leave to withdraw his replication and amend his original bill of complaint in this cause filed by dismissing said bill as to defendants Isaac L. Blout in his own right, Morris Clark, Henry C. Tracy, and the firm of Ryon and Tracy, and also to amend said bill in other particulars, so as to more clearly set forth the points now at issue between the parties.

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SAM'L MADDOX,
Solicitor for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, personally appeared George W. Cochran, who, being first duly sworn according to law, deposes and says: On the 14th day of November, A. D. 1889, I filed my original bill in this cause against the defendants therein named, asking for the specific performance of a certain contract for the sale of square 980, in the city of Washington, in said District, made by one Joseph

T. Dyer, who assumed to act as agent for all the parties in interest in said square. Answers were filed, issues joined, and proofs taken. On the incoming of the proofs it appeared from the depositions of defendants Julius Lansburgh and Isaac L. Blout that said defendant, Julius Lansburgh, had no authority whatever from defendants Isaac L. Blout and Morris Clark to offer for sale their interests in said square 980. Until such depositions were taken I had no way to satisfy myself that the said Julius Lansburgh in so placing the property in the hands of said Joseph T. Dyer had no authority in that behalf from his co-owners, Isaac L. Blout and Morris Clark. Since the filing of the original bill in this cause the firm of Ryon and Tracy and Henry C. Tracy have transferred and assigned to me their interests in said square. They are therefore no longer necessary parties in the further prosecution of this suit, and I am advised that the original bill should be dismissed as to them, and also that my claim against said Isaac L. Blout and said Morris
89 Clark must be abandoned. It is for these reasons that I ask leave to file an amended bill; and I further say that my application for leave to file such an amended bill in this cause is not made for the purpose of vexation or delay, but because I am advised the matter of the proposed amended — is material and I could not with reasonable diligence have sooner introduced it into the bill.

GEO. W. COCHRAN.

Subscribed and sworn to before me this 18th day of July, A. D. 1890.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

Order Granting Leave to File Amended Bill.

Filed July 21, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, *et al.* } Equity. No. 12133.

This cause coming on to be heard, on the motion of plaintiff for leave to file the amended bill accompanying the motion, the same was duly considered, and it is thereupon this 21st day of July, A. D. 1890, ordered that the said motion be, and the same is hereby, granted upon condition that the plaintiff pay all costs incurred by defendant Blout in his own right, and by defendants Ryon and Tracy, Henry C. Tracy, and Morris Clark, the same to be taxed by the clerk, with leave to the parties to take such further testimony as they may be advised.

By the court:

A. B. HAGNER.

90 *Amended Bill.*

Filed July 21, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Plaintiff,
vs.
ISAAC L. BLOUT, Trustee; JAMES P. RYON, JULIUS LANSBURGH, Defendants. } In Equity. No. 12133.

To the honorable justices of the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff, by leave of the court first had and obtained, brings this his amended bill of complaint against the above-named defendants, and thereupon he avers and shows:

1. That he is a citizen of the United States, commorant in said District, and brings this suit in his own right.

2. That defendant Isaac L. Blout is a citizen of the United States, commorant in said District, and is sued as trustee, as hereinafter shown.

3. That defendant Julius Lansburgh is a citizen of the United States, commorant in said District, and is sued in his own right.

4. That defendant James P. Ryon is a citizen of the United States, commorant in said District, and is sued for reasons hereinafter shown.

5. That heretofore, to wit, on or about the first day of June, A. D. 1888, by deed of that date, one Samuel Bieber, trustee, conveyed all of square numbered nine hundred and eighty (980), in the city of Washington, District of Columbia, to defendant Isaac L. Blout, his heirs and assigns, in and upon the following trusts, to wit: "In trust to sell the same, either in whole or according to such subdi-
91 vision of said square as may be made, and convey the same in fee-simple to the purchaser or purchasers, who shall not be responsible for the application of the purchase-money; provided, nevertheless, that any subdivision of said square and any sales thereof, in part or in whole, that may be made by said party of the second part shall be approved by James P. Ryon, who shall signify such approval by signing such subdivision and all deeds made by said party of the second part to purchaser or purchasers, and the proceeds of such sale or sales apply as set forth in a certain declaration of trust bearing even date with these presents and executed by the said party hereto of the second part;" all of which will more fully appear on reference had to a copy of the said deed of conveyance (as the same is recorded in Liber 1192, at folio 6, of the land records of said District), marked "Exhibit Amended Bill No. 1," which said deed it is prayed may be read at the hearing of this cause and taken and considered as a part thereof as if herein fully incorporated.

6. That said declaration of trust in said deed of trust referred to

and mentioned is not matter of record, but this plaintiff is advised and believes and therefore avers and offers to prove that therein and thereby the said Isaac L. Blout, trustee, has declared that he holds said square in trust for the following-named persons and in the following proportions, to wit: For himself, one-sixth ($\frac{1}{6}$); for said defendant, Julius Lansburgh, one-third ($\frac{1}{3}$); for one Henry C. Tracy, one-sixth ($\frac{1}{6}$); for one Morris Clark, one-sixth ($\frac{1}{6}$). and for a certain firm or partnership consisting of said James P. Ryon and one Burr R. Tracy and doing business under the firm name of Ryon and Tracy, one-sixth ($\frac{1}{6}$), as will more fully and at large appear by reference had to the copy of said declaration in trust herewith filed and marked "Exhibit Amended Bill No. 2," which it is prayed may be read at the hearing of this cause and taken and considered as a part hereof and as if herein fully incorporated.

92 And the plaintiff further charges that the defendant Isaac L. Blout, as trustee, has given to the said defendant, Julius Lansburgh, and that the said Julius Lansburgh now holds a copy of said declaration of trust signed by the said Isaac L. Blout and duly acknowledged by him.

7. That some time in the month of January, A. D. 1889, the said defendant, Julius Lansburgh, pretending to act in that behalf under and by virtue of authority in him vested by said parties in interest in said square, placed the said square in the hands of Joseph T. Dyer, a real-estate broker in the said city of Washington, for sale at and for the sum of twenty-eight (28) cents per square foot, and authorized and empowered said Joseph T. Dyer to sell said square for the said price and upon terms usual in such transactions; and said Joseph T. Dyer, acting under the authority in him so vested and as agent for said Julius Lansburgh and other parties interested in said square, on the 26th of September, A. D. 1889, sold said square to this plaintiff at and for the sum of twenty-eight (28) cents per square foot, and then and there signed a contract of sale in the following words and figures, to wit:

"WASHINGTON, D. C., *Sept. 26th*, 1889.

Received of George W. Cochran, Esq., a deposit of three hundred, $300, dollars, to be applied in part payment of purchase of all of square 980, sold him for 28 cts. per sq. ft., on following terms: ⅓d cash, bal. in 1, 2, and 3 years, with int. at six per cent., payable semi-annually; property sold as a good title or no sale; all taxes to be paid to November 30th, 1889. The purchaser is required to make full settlement in accordance with terms of sale within thirty days from this date or deposit will be forfeited. Conveyancing at purchaser's cost.

J. T. DYER,
Agent for Julius Lansburgh and Others."

That said square numbered nine hundred and eighty (980) is situated in the northeastern section of the said city of Washington, and contains eighty-three thousand six hundred and fifty-two and forty-two hundredths (83,652.42) square feet of land.

93 That this plaintiff paid to the said Joseph T. Dyer and the said Joseph T. Dyer now holds as agent of the said Julius Lansburgh and other parties in interest the said sum of three hundred dollars ($300.00).

8. That the said sale so made to this plaintiff was on the same day promptly reported by the said Joseph T. Dyer in writing to the said Julius Lansburgh and was verbally approved by him, and was also on the same day reported by said Joseph T. Dyer to the said defendant, Isaac L. Blout, who at that time neither approved nor disapproved of said sale.

9. That on the morning of the 27th of September, A. D. 1889, the said Joseph T. Dyer notified the said firm of Ryon and Tracy of the said sale by a certain memorandum in writing as follows, to wit:

"WASHINGTON, D. C., *Sept. 26th*, 1889.

"Messrs. Ryon and Tracy.

"DEAR SIR-: I have sold sq. 980 to George W. Cochran, Esq., for 28 cents per sq. ft., ⅓ cash, bal. in 1, 2, and 3 years, 6 per cent., and have received a deposit of $300 to bind the said sale; property sold as a good title.

Very truly, &c., J. T. DYER."

And said firm of Ryon and Tracy, in their own behalf and as agents for said Henry C. Tracy and with the full knowledge and consent of the said James P. Ryon, approved the said sale by the following memorandum written on said notice: "Sale approved. Ryon and Tracy, Sept. 27, '89."

10. That said Joseph T. Dyer thereupon and immediately thereafter took the said notice of sale so as aforesaid approved by the said Ryon and Tracy to the said defendant, Lansburgh, who on the same day approved the said note or memorandum of sale by writing across the same the words, "Approved: Julius Lansburgh,"

94 and thereby approved the said sale, so far as his interest in said square was concerned.

11. That said defendant-, Isaac L. Blout and said Morris Clark, declined to be bound by the alleged unauthorized act of defendant Lansburgh in so giving said square to said Joseph T. Dyer for sale, and have refused and still refuse to approve said sale so as aforesaid made to this plaintiff or to convey to this plaintiff their interest in said square.

12. That said Ryon and Tracy and said Henry C. Tracy have conveyed to this plaintiff their respective interests in said square by assigning to him, this plaintiff, the certificates of ownership issued to them by said Isaac L. Blout, trustee.

13. That said square is subject to a deed of trust to secure an indebtedness of six thousand seven hundred and eighty-three dollars ($6,783.00) and upwards to the National Metropolitan Fire Insurance Company of the District of Columbia; which said debt, as this plaintiff is informed, is long since past due.

14. And the plaintiff further shows that he has always been ready and willing to perform his part of said contract of sale, to wit,

to pay in cash one-third (⅓) of the purchase, giving his notes at one (1), two (2), and three (3) years from day of sale for the balance, with interest at six per cent. per annum, payable semi-annually, said notes to be secured by deed of trust on the property sold, provided the said debt be paid and the trust securing same released, or provided the amount of said debt be deducted from the cash payment and the said trust allowed to remain as an encumbrance on the square, and has so notified the said parties in interest, this plaintiff offering to take the whole square according to the agreement originally made with said Joseph T. Dyer or the interest in said square so as aforesaid owned by said defendant, Julius Lansburgh, in accordance with the subsequent note or memorandum of said agreement so as aforesaid made by said Julius Lansburgh on the 27th day of September, A. D. 1889.

95 And this defendant hoped that said defendant, Julius Lansburgh, would perform his part of said contract, as in justice and equity he ought to do; but the said defendant, Julius Lansburgh, refuses to perform his part of said contract and assigns to this plaintiff the certificate of ownership so as aforesaid issued to him by said Isaac L. Blout, trustee, and now held by said Lansburgh, and said defendant, Isaac L. Blout, refuses to execute a deed conveying to this plaintiff the one-third (⅓) interest in said square so as aforesaid belonging to said Julius Lansburgh, though the sale of said interest to this plaintiff was in writing, approved by said James P. Ryon, as hereinbefore shown.

And this plaintiff further shows that the amount of said cash payment is ready and unproductive in his hands for completing said purchase.

Which said refusals of defendants Julius Lansburgh and Isaac L. Blout are contrary to equity and good conscience and tend to manifest wrong, injury, and oppression of the plaintiff in the premises.

In tender consideration whereof and forasmuch as this plaintiff is remediless in the premises at and by the strict rules of the common law and is relievable only in a court of equity, where such matters are properly cognizable, he therefore prays:

1. That said Isaac L. Blout, trustee, Julius Lansburgh, and James P. Ryon may be made parties defendant to this amended bill and duly served with process requiring them and each of them to duly be and appear in this honorable court to answer the premises and abide by and perform such order or decree as may be passed herein.

2. That said Isaac L. Blout, trustee, the said James P. Ryon joining, may be compelled by decree of this honorable court to convey to this plaintiff a one-third (⅓) interest in said square 980, so as here-

96 inbefore shown purchased by this plaintiff from said Julius Lansburgh with the consent and approval of said James P. Ryon, this plaintiff hereby again agreeing to perform his part of said contract, proper allowance being made for the incumbrance now against said square, or—

3. That said defendant, Julius Lansburgh, may be compelled to

transfer and assign to this plaintiff the certificate of ownership in said square issued to him by said Isaac L. Blout, trustee.

4. That the plaintiff may have such other and further relief as the nature of the case may require and to your honor may seem fit.

And the plaintiff will ever pray, &c.

GEO. W. COCHRAN.

SAM'L MADDOX,
Solicitor for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

George W. Cochran, being first duly sworn, deposes and says: I have read over the foregoing amended bill by me subscribed and know the contents thereof; the matters and things therein stated as of my personal knowledge are true, and those stated on information and belief I believe to be true.

GEO. W. COCHRAN.

Subscribed and sworn to before me this 18th day of July, A. D. 1890.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

EXHIBIT AMENDED BILL NO. 1.

Filed July 21, 1890.

This indenture, made this first day of June, in the year of our Lord eighteen hundred and eighty-six, between Samuel
97 Bieber, trustee, of the first part, and Isaac L. Blout, of the second part, both of the District of Columbia.

Whereas one Frank P. Murphy conveyed the hereinafter-described real estate unto the said Samuel Bieber by deed dated on the thirteenth day of May, A. D. 1886, and recorded in Liber 1181, folio 362, of the land records for the District of Columbia.

And whereas the said Samuel Bieber has sold the same to the said party of the second part to hold on the trusts hereinafter set forth, which sale has been approved by James P. Ryon, as provided for in said deed of 13th May 1886—in evidence of which approval the said James P. Ryon has signed these presents.

Now therefore this indenture witnesseth: That the said party of the first part, as trustee aforesaid, for and in consideration of the sum eleven thousand seven hundred and ten $\frac{7}{100}$ dollars, in lawful money of the United States, to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and conveyed and does by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns forever, all that piece or parcel of ground, situate in the city of Wash-

ington, in the District of Columbia, known and designated as all of square numbered nine hundred and eighty (980.)

Together with all the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand, either at law or in equity, or otherwise however of the said party of the first part, of, in, to or out of the said piece or parcel of ground and premises.

To have and hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns forever:

98 In and upon the following trusts, namely: In trust to sell the same either in whole or according to such subdivision of said square as may be made, and convey the same in fee-simple to the purchaser or purchasers who shall not be responsible for the application of the purchase-money—provided however that any subdivision of said square and any sales thereof, in part or in whole that may be made by the said party of the second part, shall be approved by James P. Ryon, who shall signify such approval by signing such subdivision and all deeds made by the said party of the second part to purchaser or purchasers: and the proceeds of such sale or sales apply as set forth in a certain declaration of the trust bearing even date with these presents and executed by the said party hereto of the second part, and the said party of the first part, for himself, his heirs executors and administrators does hereby covenant, promise and agree to and with the said party of the second part his heirs and assigns, that he, the said party of the first part and his heirs, shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them.

And further, that he, the said party of the first part, and his heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs or assigns, as said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise, or require.

In testimony whereof, the said party of the first part as trustee aforesaid, has hereunto set his hand and seal on the day and

99 year first hereinbefore written.

SAMUEL BIEBER. [SEAL.]
JAS. P. TRACY.

Signed, sealed, and delivered in the presence of—

WILLIAM FITCH.

DISTRICT OF COLUMBIA, *ss:*

I, William Fitch, a notary public in and for the District aforesaid, do hereby certify that Samuel Bieber, trustee, party to a certain deed bearing even date on the first day of June, A. D. 1886, and hereto annexed, personally appeared before me, in the District aforesaid, the said Samuel Bieber, trustee, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this first day of June, A. D. 1886.

[NOTARIAL SEAL.] WILLIAM FITCH,
Notary Public.

EXHIBIT AMENDED BILL NO. 2.

Filed July 21, 1890.

Whereas Samuel Bieber, trustee, by deed bearing even date with these presents, conveyed to me as trustee all of square numbered nine hundred and eighty (980), in the city of Washington, in the District of Columbia, with power to sell the same or any part thereof, with the written consent of James P. Ryon, and convey the same to the purchaser or purchasers by good and sufficient deed and free from all liability for the application of the purchase-money: Now, therefore, I do hereby declare that I hold said property for the following purposes and no other, namely, in trust for myself, one-sixth ($\frac{1}{6}$); Julius Lansburgh, one-third ($\frac{1}{3}$); Henry C. Tracy, one-sixth ($\frac{1}{6}$); Morris Clark, one-sixth ($\frac{1}{6}$), and the firm of Ryon and Tracy (consisting of James P. Ryon and Burr R. Tracy), one-sixth ($\frac{1}{6}$), each of the said named parties having each contributed his proportionate part of the purchase-money; the same to be subdivided in such manner as may be agreed upon by the said named parties in interest, such agreement to be expressed by the written signature of James P. Ryon, and to be sold either in whole or in part upon such terms as may be agreed on by the said parties in interest, such agreement to be expressed by the written signature of James P. Ryon, and to convey the ground so sold to the purchaser or purchasers by good and sufficient deed or deeds, and the proceeds of such sale or sales to be paid over unto the said named parties in interest, their executors, administrators, or assigns, according to their respective interests at the time of such sale or sales, it being hereby distinctly understood and agreed that in the event of any sale or sales the purchaser or purchasers shall not be in any way responsible for the application of the purchase-money; and it is further understood and agreed that if the parties in interest shall direct I will apply the proceeds of sale to the payment of two notes given for the purchase-money to the National Metropolitan Fire Insurance Company of the District of Columbia, by Frank P. Murphy, and secured upon the above-mentioned square, instead of paying such proceeds to the parties in interest as above set forth.

Witness my hand and seal this June 1st, first day of June, A. D. 1886.

I. L. BLOUT. [SEAL.]

Witness:
WILLIAM FITCH.

DISTRICT OF COLUMBIA, *ss:*

I, William Fitch, a notary public in and for said District, do hereby certify that Isaac L. Blout, party to a certain declara-
101 tion of trust dated on the first day of June, A. D. 1886, and hereto annexed, personally appeared before me, in said District, said Isaac L. Blout being personally well known to me to be the person who executed the said declaration of trust, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this first day of June, A. D. 1886.

[NOTARIAL SEAL.] WILLIAM FITCH,
Notary Public.

Dismissal of Original Bill.

Filed July 23, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } In Equity. No. 12133.

And now comes the plaintiff, George W. Cochran, with leave of the court first had and obtained, and dismisses his original bill in this cause filed as against the defendant Isaac L. Blout in his own right and defendants Morris Clark, Henry C. Tracy, and the firm of Ryon and Tracy.

SAM'L MADDOX,
Solicitor for Plaintiff.

The clerk will please enter the original bill in this cause dismissed as above set forth.

SAM'L MADDOX,
Solicitor for Plaintiff.

July 23, 1890.

102 *Separate Answer of James P. Ryon to Amended Bill.*

Filed August 12, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN, Plaintiff,
vs.
ISAAC L. BLOUT *et al.*, Defendants. } In Equity. No. 12133.

The separate answer of James P. Ryon to the amended bill of complaint in this cause exhibited against him and others by George W. Cochran respectfully represents—

That this respondent admits that square nine hundred and eighty (980), in the city of Washington, in said District, was heretofore conveyed in trust to defendant Isaac L. Blout as trustee for the uses and purposes in said deed of conveyance fully set forth and described.

That said Isaac L. Blout, as trustee, issued certificates of ownership to the several parties interested in said square, and that defendant Julius Lansburgh is the owner of a one-third ($\frac{1}{3}$) interest therein and holds a trustee's certificate therefor.

That on or about the twenty-sixth day of September, A. D. 1889, one Joseph T. Dyer, as agent for the said Julius Lansburgh and others, sold the said square to the plaintiff in this cause, and that said sale was reported to this respondent in writing and approved by him on the twenty-seventh day of September, A. D. 1889.

That the firm of Ryon and Tracy, whereof this respondent is a member, and one Henry C. Tracy have since said sale conveyed their respective interests to the said George W. Cochran, in accordance with the provisions of said sale, by assigning to him, the said George W. Cochran, the certificates of ownership issued to them by the said Isaac L. Blout as trustee.

Further answering said amended bill, this respondent says that he is ready and willing to sign a deed, to be executed by the
103 said Isaac L. Blout, trustee, conveying to the said George W. Cochran the one-third ($\frac{1}{3}$) interest in said square so as aforesaid owned by the said Julius Lansburgh and, as aforesaid, represented by a certificate of ownership issued to him by the said Isaac L. Blout.

And, having fully answered so much of said amended bill as this respondent is advised it is necessary or material for him to make answer unto, this respondent prays to be hence dismissed with his reasonable costs.

JAS. P. RYON.

Subscribed and sworn to before me this 12 day of August, A. D. 1890.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

Answer of Isaac L. Blout, Trustee.

Filed Sept. 25, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, *et al.* } Equity. 12133.

Separate answer of defendant Blout to complainant's amended bill.

This defendant, by protestation, not confessing or admitting as true the various matters and things averred in complainant's amended bill, for answer to so much and such parts thereof as he is advised it is necessary and material for him to answer, makes answer and says:

1, 2, 3, 4, 5, and 6. This defendant admits the truth of the
104 averments contained in paragraphs 1, 2, 3, 4, 5, and 6 of said amended bill, except that he does not believe that the said Lansburgh holds a copy of said deed of trust signed by this defendant, as averred in paragraph six.

7. This defendant has no personal knowledge of the facts set forth in paragraph seven of said bill and can neither admit nor deny the same, and should they be considered material he demands strict proof thereof.

8. He has no personal knowledge as to the report made by said Dyer to said Lansburgh as set forth in paragraph eight; he denies, however, that when said Dyer reported said sale to this defendant that he neither approved or disapproved of the same; on the contrary, he avers that he emphatically expressed his dissap-roval thereof and questioned the right of said Dyer to make the same.

9 and 10. Defendant has no knowledge of the matters set forth in paragraphs nine and ten and can neither admit nor deny the same, but should they be considered material to his interests he demands strict proof thereof.

11, 12, and 13. Defendant admits the truth of the averments of paragraphs eleven, twelve, and thirteen.

14. This defendant knows nothing of the willingness of complainant to take the interest of defendant Lansburgh in said real estate; he insists that should complainant be entitled to said interest he would merely be entitled to have the declaration of trust or certificate held by said Lansburgh assigned to him.

Defendant admits that he refuses to execute to complainant a deed for said interest, as he believes that complainant is not entitled to the same.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

ISAAC L. BLOUT, *Trustee,*
By LEON TOBRINER,
His Solicitor.

105 I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated on information and belief I believe to be true.

——— ———.

Subscribed and sworn to before me this — day of September, A. D. 1890.

——— ———.

Oath waived.

SAM'L MADDOX,
Solicitor for Plaintiff.

Sep. 24, '90.

Answer of Defendant Julius Lansburgh.

Filed September 25, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN *vs.* ISAAC L. BLOUT *et al.* } Equity. No. 12133.

Separate answer of defendant Julius Lansburgh to complainant's amended bill.

This defendant, by protestation, not confessing or admitting as true the various matters and things averred in complainant's amended bill, for answer to so much and such parts thereof as he is advised it is necessary and material for him to answer makes answer and says:

1, 2, 3, 4, and 5. Defendant admits the averments of paragraphs 1, 2, 3, 4, and 5 of complainant's bill.

6. Defendant admits the defendant Blout holds the real estate in trust in the proportions set forth in the sixth paragraph of said amended bill, but he denies that said Blout has executed and
106 delivered to him such a declaration of trust. This defendant has only in his possession an office copy thereof.

7. Answering paragraph seven, defendant denies that he in the month of January, A. D. 1889, pretending to act in that behalf under and by virtue of authority in him vested by said parties in interest in said square, placed the same in the hands of one Joseph T. Dyer for sale; on the contrary, he denies that he ever authorized the said Dyer to sell the same, but avers that the circumstances attending his conversation with said Dyer are in detail set forth in his answer to the original bill herein, and he hereby reiterates and adopts such averments as part hereof. He has no personal knowledge of the sale pretended to have been effected by said Dyer to complainant or the contract executed by or the deposit paid to him, as set forth in said amended bill, and neither admits nor denies the same. Should the same, however, be material to his interest he demands strict proof thereof.

8. Answering paragraph eight, defendant denies that the said sale was on the same day verbally reported by the said Dyer to him and that he verbally approved it. He has no personal knowledge of the facts, so far as defendant Blout is concerned, but is informed and believes that the defendant Blout refused to approve said sale when the same was reported to him.

9 and 10. Answering paragraphs nine and ten, defendant says that on the twenty-seventh day of September, A. D. 1889, said Dyer brought to him a notice similar to that set out in said paragraph addressed to said Messrs. Ryon and Tracy, at the same time informing defendant that he had sold said real estate and requesting him to approve said sale. Defendant informed said Dyer that he should obtain the approval of the trustees, who had authority to make the same, and that if such consent was obtained that he would have no objection thereto; that said Dyer then left the office of defendant, and in a short time returned, showing to this defendant
107 the indorsement of said Ryon and Tracy, as in paragraph nine set forth, and requested this defendant to sign the same, so that he could obtain the signatures of defendant Blout thereto. Defendant did sign the same, but with the distinct and positive understanding with said Dyer that he must obtain the consent of the defendant Blout to said sale before this defendant's approval should take effect, and that the sale was of the entire interest of said square, not of individual interests, and defendant emphatically denies that the said sale was ever made as of individual interests or that he ever intended to approve or did approve of a sale of his individual interest only.

11. Defendant admits that the said Blout and Clark refused to approve said sale as attempted to be made by said Dyer, but he denies any ins-uation that he ever authorized said Dyer to make the sale he attempted to make to complainant.

12. He admits on information the averments of paragra*gra*ph twelve. He is also informed and believes that the approval of said Ryon and Tracy to said sale was only obtained after the said Dyer had agreed to divide with them the commissions he would earn by consum-ating the same.

13. This defendant admits the truth of the allegations in paragraph thirteen of said bill.

14. Answering paragraph fourteen, defendant says he knows nothing of the willingness of complainant to consum-ate the alleged purchase except as may be inferred from the averments in said paragraph. He denies, however, that said complainant ever offered to take the interest of this defendant in said real estate, and that he ever entered into a contract for sale of the same to complainant, or that complainant is entitled to have the same conveyed to him under the circumstances.

And now, having fully answered, he prays to be hence dismissed with his proper costs.

JULIUS LANSBURGH.

LEON TOBRINER, *Solicitor.*

108 I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated on information and belief I believe to be true.

JULIUS LANSBURGH.

Subscribed and sworn to before me this ninth (9) day of September, A. D. 1890.

[SEAL.] JOSEPH J. McNALLY,
Notary Public, District of Columbia.

Replication.

Filed October 7, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT and Others. } Equity. No. 12133.

The plaintiff hereby joins issue on the answers of defendants Blout, Lansburgh, and Ryon to the amended bill in this cause filed.

SAM'L MADDOX,
Solicitor for Plaintiff.

Entry in Order Book 11, *Page* 176.

COCHRAN
vs.
BLOUT *et al.* } No. 12133.

109 The clerk will please calendar this cause for hearing at the next special term on the pleadings, exhibits, and proofs.

SAM'L MADDOX,
Solicitor for Plaintiff.

October 28, '90.

Calendared as ordered.

BY THE CLERK.

'90, 10, 28.

Depositions for Complainant.

Filed October 29, 1890.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT. } In Equity. No. 12133.

WASHINGTON, D. C., *October* 13, 1890—2.15 o'clock p. m.

Met pursuant to notice.

Present on behalf of the complainant, Mr. Maddox; present on behalf of the defendant, Mr. Tobriner.

GEORGE W. COCHRAN, a witness of lawful age, called by and on behalf of complainant, having been duly sworn, is examined—

By Mr. MADDOX:

Q. Mr. Cochran, you are the plaintiff in this case?
A. I believe I am—the case of Cochran against Blout.
Q. Where do you live?
A. In the city.
Q. How long have you lived here?
A. About all my life.
Q. Forty years or so?
A. At least that.
Q. What is your business?
A. Cigar and tobacco dealer.
Q. Have you ever dealt in real estate—and, if so, to what extent—in this city?
110 *H.* Well, I have been buying and selling real estate in limited amounts for the last 30 years—about 35 years.
Q. Are you familiar with the methods of conveyancing in vogue in Washington with regard to the descriptions of property?
A. I believe I am.
Q. Is there a custom or usage of the trade in regard to such descriptions of real estate in use among conveyancers and in sales of real estate in Washington?

Mr. TOBRINER: The question is objected to as improper, as no foundation has been laid for the same.

A. I have bought and sold, I suppose, twenty or thirty pieces of property, and there is but one usage in buying and selling that I know of.
Q. What is that?
A. If I bought a lot in this square, the lots are all numbered. If it is an original lot, I would sell original lot number so and so, in square so and so. As there are very few original lots, and they are nearly all subdivided, it is lot so and so of such a subdivision in square so and so. If I buy the square, it is square such a number, according to the plats of the city.
Q. How are the squares usually bounded?
A. They are bounded north, east, south, and west.
Q. By streets and avenues?
A. By streets and avenues, of course.
Q. Is there a square numbered 980 in the city of Washington?
A. According to the plat book of the city, there is.
Q. Where is it?
A. To the best of my knowledge and belief, it is between I and K, 11th and 12th streets northeast.
Q. By whom was your attention first called to this square?
A. By J. T. Dyer.
Q. Under what circumstances?
A. Some four or five, perhaps six, weeks prior to his calling my attention to this square, I told Mr. Dyer there was a lady friend of

mine who wanted a lot or two for investment, and I advised
111 her to take a lot or two in the northeast.

Mr. TOBRINER: The foregoing question and answer is objected to as incompetent and irrelevant. The declarations made to Mr. Dyer in the absence of these parties are objected to as incompetent.

The WITNESS: I told him to look out for a lot or two in the northeast for this lady and let me know and I would look at it. He drove up to my store one day by appointment to go out and look at the lots. On the way there he called my attention to a square that he had for sale. I told him that after we had got through looking at the lots I was looking after for another party I would look at this square. He showed me several lots for my lady friend and none of them suited. He then drove me to this square. He told me the square was in his hands for sale at 28 cents a foot. He drove me to the front of this square, on I street—that is, to the south front. I looked at it and did not see any street on the other side nor any terminus. Said I, "Dyer, drive me around the square." He deliberately drove me around the square, and I looked it all over and thought for a few moments, and I told him I would take it.

Q. At what figure?

A. At 28 cents a foot.

Q. Is the square improved or unimproved?

A. Unimproved.

Q. Do you know how many square feet there are in it?

A. Not without going into a calculation. I don't carry that in my head; somewhere between 80 and 90 thousand feet, I think. I cannot tell exactly what it is. If you will give me the plat I can tell you in five minutes what it is.

Q. What did you then do after telling Dyer that you would take this square at 28 cents?

A. Mr. Dyer says, "Drive up to my office and we will close the transaction." We drove up to his office and I drew him a check for $300, for which he gave me a receipt, agreeing to the sale of square 980, title to be perfect.

Q. Will you examine the paper attached to the deposition of J. T. Dyer and state whether or not that is the receipt he gave you?

112 A. To the best of my knowledge and belief that is the receipt.

Q. Don't you know that it is?

A. Well, it might be a duplicate or a forgery or anything else. I swear to the best of my knowledge and belief it is. Now, when you come to show me my deposition here I can swear to it, if it has not been taken away.

Q. What did you do with that receipt?

A. I took it and filed it, I think, in the record office.

Q. What is the date of that?

A. September 26, 1889.

Q. What has become of the deposit of $300 which that receipt says you made to Mr. Dyer on that day?

A. I have never seen it or heard of it since.

Q. Between the 26th of September and the 14th of November, the day this bill was filed, will you state what efforts you made to comply with your contract?

A. Up to the day that that bill was filed I had repeatedly called on Mr. Dyer and told him that——

Mr. TOBRINER: I object to declarations made by Mr. Dyer.

The WITNESS: That I was ready and willing to comply with his terms at any day, and urged him to have the parties execute the title.

By Mr. MADDOX:

Q. With whom were all your dealings in this matter had?

A. J. T. Dyer.

Q. What did he represent himself to be?

A. The agent of the owner or owners. I can't say whether he said owner or owners of square 980. I will not say.

Mr. TOBRINER: All declarations made by the said Dyer are objected to as immaterial and incompetent.

By Mr. MADDOX:

Q. Whose fault was it, if anybody's, that the transaction was not closed in the time limited in the receipt, to wit, 30 days?

A. It was the fault of the owner or owners, not my own fault. Mr. Dyer had been repeatedly informed that I was ready to comply with the terms of sale.

113 Q. After the bill was filed did any of the owners consent to comply with the contract made by Mr. Dyer?

(Objected to as immaterial and incompetent.)

A. I believe that Ryon and Tracy complied with the contract, and Henry C. Tracy. I know that I got a one-third interest in it; I think it was through Ryon and Tracy. There may have been two Tracys.

Q. What was the nature of the conveyance made to you; do you remember?

(Objected to, inasmuch as the conveyance would speak for itself.)

A. Well, I think it was some kind of a receipt conveying to me from Blout as trustee.

Q. The assignment of Blout's certificate?

A. The assignment of the certificate that is on record. It shows for itself.

Mr. MADDOX: I offer in evidence the deed from Ryon and Tracy, James P. Ryon, Burr R. Tracy, and Henry C. Tracy to George W. Cochran, recorded in Liber 1454, *of* folio 238, of the land records of the District of Columbia.

Said deed is in the words and figures following, to wit:

Whereas by deed dated the first day of June, A. D. 1886, Samuel Bieber did convey to me all of square numbered nine hundred and

eighty (980), situate in the city of Washington, D. C., in and upon certain trusts, more particularly set forth in said deed, duly recorded among the land records for said District in Liber No. 1192, folio 6, *et seq.*:

Now, therefore, I do declare that I hold said real estate in trust for the following purposes and none other, namely, in trust, one-sixth for each of the following-named persons and firms, namely, myself, Henry C. Tracy, Morris Clark, and the firm of Ryon and Tracy (consisting of Jas. P. Ryon and Burr R. Tracy), and two-sixths for Julius Lansburgh, same to be subdivided in such manner as may be agreed on by the said named parties in interest, such
114 agreement to be expressed by the written signature of Jas. P. Ryon, and to be sold either in whole or in part upon such terms as may be agreed on by the said parties in interest.

Such agreement to be expressed by the written signature of Jas. P. Ryon and to convey the ground so sold to the purchaser or purchasers by good and sufficient deed or deeds, and the proceeds of such sale or sales to be paid over unto the said named parties in interest, their executors, administrators, or assigns, according to their respective interests at the time of such sale or sales, it being hereby distinctly understood and agreed that in the event of any sale or sales the purchaser or purchasers shall not be in any way responsible for the application of the purchase-money; and it is further understood and agreed that, if the parties in interest shall so direct, I will apply the proceeds of sales to the payment of two notes given for the purchase-money to National Metropolitan Fire Insurance Company of the District of Columbia by Frank P. Murphy and secured upon the above-mentioned square, instead of paying such proceeds to the parties in interest as above set forth.

Witness my hand and seal this twenty-fourth day of December, A. D. 1889.

ISAAC L. BLOUT, *Trustee.* [SEAL.]

DISTRICT OF COLUMBIA, *To wit:*

I, Alexander H. Bell, a notary public in and for said District, do hereby certify that Isaac L. Blout, party to a certain declaration of trust on the twenty-fourth day of December, A. D. 1889, and hereto annexed, personally appeared before me, in said District, the said Isaac L. Blout being personally well known to me to be the person who executed the said declaration of trust, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-fourth day of December, A. D. 2889.

[NOTARIAL SEAL.] ALEXANDER H. BELL,
Notary Public, D. C.

115 Know all men by these presents, that we, James P. Ryon and Burr R. Tracy, (constituting the firm of Ryon and Tracy), of the District of Columbia, and Henry C. Tracy, of the county of Bradford, State of Pennsylvania, for and in consideration of the sum of six thousand two hundred dollars to us in hand paid by

George W. Cochran, of the said District of Columbia, the receipt whereof is hereby acknowledged, have, bargained and sold, transferred, assigned and set over, and do by these presents bargain and sell, transfer, assign and set over unto the said George W. Cochran, his heirs and assigns forever, all, and all manner of, right, title, interest and estate belonging to us, and to any or either of us, in and to square numbered nine hundred and eighty (980), in the city of Washington, in said District of Columbia, said interest being an undivided one-third interest in the whole of said square, as set forth and described in the annexed declaration of trust, made and executed by Isaac L. Blout, as trustee, and we, and each of us, do hereby authorize and empower the said Isaac L. Blout, trustee, to convey to said George W. Cochran, his heirs or assigns, or such person or persons as the said Cochran may direct, said undivided one-third interest in said square, by a good and sufficient deed, and in the case of the sale of the whole of said square, or of any part of it, we do hereby further authorize and direct the said Blout, or the trustee acting in his stead, whoever he may be, to pay over to the said Cochran, or his assigns, one equal one-third part of the proceeds of such sale or sales, first deducting therefrom one-third of such an amount as may then be due upon or on account of two notes for $3,391.50 each, made by one Frank P. Murphy, and secured by deed of trust on said square.

And we do hereby covenant and agree to and with the said George W. Cochran, his heirs and assigns, at any and at all times hereafter, upon his request and at his cost, to make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances, and the said undivided one-third interest therein, to the said Cochran, his heirs or assigns, as the said Cochran, his heirs
116 or assigns, or his or their counsel learned in the law, may advise, devise or require.

In testimony whereof we have hereunto set our hands and seals this thirtieth day of December, A. D. 1889.

JAS. P. RYON. [SEAL.]
BURR R. TRACY. [SEAL.]
HENRY C. TRACY. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. S. HOLLAND,
As to Jas. P. Ryon and Burr R. Tracy.
FERDINAND SCHMIDT.

DISTRICT OF COLUMBIA, *ss*:

I, Ferdinand Schmidt, a notary public in and for the said District, do hereby certify that James P. Ryon and Burr R. Tracy, parties to a certain deed or instrument in writing bearing date on the thirtieth day of December, A. D. 1889, and hereto annexed, personally appeared before me, in the District aforesaid, the said James P. Ryon and Burr R. Tracy being personally well known to me to

be the persons who executed the said deed or instrument in writing, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this sixth day of January, A. D. 1890.

[SEAL.] FERDINAND SCHMIDT,
Notary Public.

STATE OF PENNSYLVANIA, }
County of Bradford, } ss:

I, W. S. Holland, a notary public in and for said county and State, do hereby certify that Henry C. Tracy, party to a certain deed or instrument in writing bearing date the thirtieth day of
117 December, A. D. 1889, and hereto annexed, personally appeared before me in the county aforesaid, the said Henry C. Tracy being personally well known to me to be the person who executed the said deed or instrument in writing, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 31st of December, A. D. 1889.

[SEAL.] W. S. HOLLAND,
Notary Public.

COMMONWEALTH OF PENNSYLVANIA, }
Bradford County, } ss:

I, W. J. Young, prothonotary of the court of common pleas of the county and State aforesaid, the same being a court of record, do hereby certify that W. S. Holland, Esquire, before whom the foregoing deed was acknowledged, was at the time *of so* an acting notary public in and for said county, duly commissioned and sworn; that his signature thereto is genuine; that he is by the laws of this Commonwealth duly authorized to take said acknowledgment, and that the same is in due conformity with the laws of this State.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Towanda, the 31 day of December, A. D. 1889.

[SEAL.] W. J. YOUNG,
Prothonotary.

Cross-examination.

By Mr. TOBRINER:

Q. Mr. Cochran, you were present when Mr. Dyer signed Exhibit "W. H. S." No. 1, were you not?

A. Yes, sir; he gave it to me when I gave him the check.

Q. Did you know at that time who the owners of the property were?

A. I did not, sir.

Q. Did you make inquiries?

A. No, sir.

118 Q. You say that he signed it as agent for Julius Lansburgh and others?

A. I say that; yes, sir. That had escaped my memory.

Q. Did you notice that at that time?

A. I presume I did.

Q. But made no inquiries as to his agency?

A. To the best of my knowledge and belief I made no inquiries.

Q. You received this receipt on the 26th of September, its date?

A. I have no doubt I did on its date. If my check bears even date with that (which I have no doubt it does), I received on that date.

Q. You recorded it on the 17th of October, 1889?

A. Whatever the record is there. I have no memory of that outside of the record.

Q. Be kind enough to state the circumstances leading to the record of it.

A. The circumstances leading to the record of it were this: That I had been trying from the date of the receipt up to that day to get the owners to conform to their contract or the contract of their agent, and despairing of which I was advised to put that on record.

Q. Whom had you seen with respect to the consum-ation of the contract?

A. No one except the agent, Dyer. Possibly I had. Mr. Lansburgh came into my store and spoke to me once, but what it was he said I don't remember.

Q. Was anything said by Mr. Lansburgh at that time about taking his individual interest?

A. Nothing that I know of. I would not qualify myself to say that he said——

Q. Do you remember anything of the conversation that took place?

A. I don't remember a word. I have an indistinct recollection that he called to see me; that is all.

Q. When did you first ascertain that the owners repudiated this contract?

A. Well, I suppose it was about that time. I can only date it from that time.

Q. At the time you placed this receipt upon record did you know anything about the title to this property?

A. I did not.

Q. Had you had it examined at that time?

A. No, sir.

119 Q. At the time that you took this receipt from Mr. Dyer did you know that this property was held by Isaac L. Blout in trust?

A. I did not.

Q. Nor did you know who the beneficiaries under the trust were?

A. No, sir.

Q. Nor did you know the terms of that trust?

A. I did not.

Q. Nor did you make any inquiries?

A. No, sir.

Q. At the time you filed this bill did you know the provisions of that trust?

A. I think I did.
Q. Are you positive of that?
A. Yes.
Q. Subsequently, you say, you took an assignment from Ryon and Tracy and Henry C. Tracy of their interest in the property?
A. Yes, sir.
Q. How were they paid?
A. They were paid by my check or by my money.
Q. In cash?
A. Yes, sir.
Q. No notes were given in payment of the purchase-money?
A. No, sir.
Q. Did you ever, before the institution of this suit, offer to take the individual interests of any of the parties who were interested in this square?
A. I think I offered to take Mr. Lansburgh's interest. I am satisfied I did.
Q. Through whom did you offer it?
A. Through Mr. Dyer. I never had any transactions that I know of with Mr. Lansburgh.
Q. You mean to say you authorized Mr. Dyer to agree to purchase Mr. Lansburgh's individual interest?
A. Yes, sir.
Q. You knew nothing of any offer that Mr. Dyer made in that respect, of your personal knowledge?
A. I do not of my personal knowledge. I am not positive, but I do not think I ever made a written offer or had any communication with Mr. Lansburgh.
Q. How long after you had placed this receipt on record did you authorize Mr. Dyer to take the individual interest of Mr. Lansburgh?
A. Yes, sir; I think it was before I placed the receipt on
120 record. I also authorized Mr. Maddox, before I placed that receipt on record, to take Mr. Lansburgh's undivided one-third interest, and I would pay for it.
Q. How long a time after the receipt was placed on record?
A. That I cannot say, sir.
Q. How long after you had accepted the receipt—about how long?
A. It may have been three, four, or five weeks. I cannot say.

Redirect examination.

By Mr. MADDOX:

Q. Refresh your recollection by looking at this receipt and the date of record.
A. Well, then, of course it was prior to the 17th day of October.
Q. That receipt calls for square No. 980?
A. Yes, sir.
Q. What parcel of land is meant by that expression—square 980, mentioned in this receipt dated Sept. 26th?

Mr. TOBRINER: I object, inasmuch as the paper will show; and the examiner is requested to certify this question and objection to the court for its decision whether the witness can answer or not.

The EXAMINER: The examiner has no power to certify a question and objection to the court unless the witness declines to answer.

A. Square 980 means one of the squares as originally laid out on the plat of the city of Washington, and that square is numbered on the original plat 980. The original plat of the city of Washington in squares to my knowledge has never been changed, and that square stands to day where it stood when the city was laid out. I am satisfied that if you go back to the original plat you will find square 980 located between I and K, 11th and 12th streets northeast, in the city of Washington.

Q. Will you state whether or not you are still ready and willing to comply with your contract so entered into between yourself, on the one part, and Mr. Dyer, as agent, on the other part.

A. There has never been a day, sir, that I was not ready and willing to comply with my contract in this matter, or any other contract that I ever made or agreement that I ever entered
121 into by myself or my agent.

GEORGE W. COCHRAN.

CHARLES EARLY, a witness of lawful age called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. MADDOX:

Q. Where do you live, Mr. Early?
A. 1603 Connecticut avenue.
Q. What city?
A. Washington, D. C.
Q. What is your business?
A. Real estate.
Q. How long have you been in the business?
A. Nine years.
Q. In this city?
A. Yes, sir.

Q. Do you know whether there is a local custom or usage about the descriptions of property in case sales are made in this city?

A. I think I do.

Q. What is that custom—how is the property usually described?

A. A. By number of lot; square 316, say, such and such a subdivision. That is the ordinary custom. That ought to be decided easily enough by the record over here. You can see that

Q. Well, in these real-estate transactions, then, there is a custom or usage to describe property by lots or squares or lots and squares?

A. That is the ordinary way of making transactions. It has been my own experience.

CHARLES EARLY.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Wm. Herbert Smith, an examiner in chancery in and for the city of Washington, District of Columbia, do hereby certify that the foregoing depositions were taken down by me from the oral
122 statements of the said witnesses at the time and place mentio-ed in the caption thereof; that the said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching said matters in controversy; that the said depositions were thereupon read over by the said witnesses and by them subscribed.

I further certify that I am not of counsel or in anywise interested in the result of this suit.

WM. HERBERT SMITH,
Examiner in Chancery.

Fees, $10.00, paid by complainant.

WM. HERBERT SMITH, *Examiner.*

Decree.

Filed January 22, 1891.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, *et al.* } In Equity. No. 12133.

This cause coming on for final hearing on the pleadings, exhibits, and proofs, and being argued by counsel and duly considered, this court doth this 22nd day of January, A. D. 1891, declare that the agreement in the complainant's amended bill of complaint mentioned, bearing date the 26th day of September, A. D. 1889, ought to be specifically performed and carried into execution by defendant Julius Lansburgh so far as the said Lansburgh may be able to perform said agreement; and it appearing that said Lansburgh has an undivided one-third ($\frac{1}{3}$) equitable interest in square numbered nine hundred and eighty (980), in the city of Washington, in said District, the same being evidenced by a certain declaration of trust signed by said defendant Blout as trustee, and for the purpose of ascertaining
123 and computing the proportion of the purchase-money now payable in cash for said interest, according to the terms of said agreement, due allowance being made for interest on the first deferred payment and the amount of the promissory notes to be given for the second and third deferred payments, it is ordered that this cause be, and the same is hereby, referred to the auditor of the court for report; and upon said Cochran paying to the said Lansburgh what sum the said auditor shall find to be now due from him,

said Cochran, on account of said purchase-money, and tendering his promissory notes for the second and third deferred payments under said agreement stipulated to be paid and given (said notes bear date September 26, 1889, to be made payable in two (2) and three years respectively after date, with interest at the rate of six per centum per annum, and to be secured by a proper conveyance in trust of said one-third (⅓) equitable interest properly executed and acknowledged by said Cochran), it is ordered, adjudged, and decreed that Julius Lansburgh convey, transfer, assign, and set over by a good and sufficient conveyance unto the said George W. Cochran, his heirs and assigns, said undivided one-third (⅓) equitable interest in and to said square numbered nine hundred and eighty (980), and if the said Lansburgh shall neglect or refuse to make such conveyance of his said interest for the period of five days after the tender of the cash payment, so to be ascertained by the auditor, and of the promissory notes to be made and secured in accordance with this decree, then it is further ordered that Samuel Maddox be, and he is hereby, appointed trustee to make such conveyance upon deposit by said Cochran in the registry of this court of the amount of said cash payment and of said promissory notes, with a conveyance in trust to secure them as aforesaid; and it is further ordered that defendant Julius Lansburgh pay the costs of this suit, to be taxed by the clerk.

By the court:

A. C. BRADLEY, *Justice.*

124 *Opinion of Mr. Justice Bradley.*

Filed April 23, 1892.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, *et al.* } Equity. No. 12133.

Opinion of Justice Bradley, delivered at special term.

In the case of George W. Cochran against Isaac L. Blout and others the bill was filed for the specific performance of a contract for the sale of land.

The original bill was filed against Isaac L. Blout, trustee; Isaac L. Blout, Julius Lansburgh, Ryon and Tracy, Morris Clark, and Henry C. Tracy as defendants.

It sets up that in September, 1889, one Dyer, a real-estate agent, acting as the agent for the defendants, entered into a contract with George W. Cochran for the sale to Mr. Cochran of square nine hundred and eighty (980), in the city of Washington, D. C., at and for the sum or price of twenty-eight (28) cents per square foot; that, although the complainant has been ready and willing at all times to comply with his contract of sale, all of the defendants had refused to comply on their part. The complainant relied upon a memo-

randum of sale which was signed by only two of these defendants. It appears that the title to the property was vested in the defendant Isaac L. Blout, trustee, upon trust, as expressed in the deed; that he should have power to sell with the consent of Ryon, and that the purchaser should not be obliged to see to the application of the purchase-money. As to the other trusts, not declared in the deed, there was a declaration of trust which was not of record.

The result of this bill and the interrogatories that were filed with it was the disclosing of this declaration of trust, which is to
125 the effect that Blout should hold the title in trust for these several defendants in undivided interests. Answers were duly filed to the bill and testimony was taken. It appears that the complainant, having no hope of holding Clark and Blout upon this contract, dismissed the bill as to them, it being retained as to Blout as trustee.

Henry C. Tracy and Ryon and Tracy conveyed their interests. There is some controversy between the complainant and the defendant Julius Lansburgh over the facts. Ryon and Tracy admitted that they were bound by the contract of sale, and they executed an assignment of their interests to the complainant. Julius Lansburgh refused to comply, and this suit is prosecuted with reference to his interest alone.

It seems that some time in January, 1889, Julius Lansburgh went to Mr. J. T. Dyer and put in his hands a number of pieces of real estate for sale, including this square nine hundred and eighty (980), and at that time he fixed the price of this square at twenty-eight cents per square foot. In September, 1889, some months afterwards, Mr. Dyer having an opportunity to show this square to the complainant, George W. Cochran, they drove out there, and after an examination of the premises Mr. Cochran agreed to purchase it at twenty-eight cents a square foot, the price named, and made a deposit with Mr. Dyer, who thereupon executed a receipt and delivered it to Mr. Cochran. The receipt was in the following words:

WASHINGTON, D. C., *Sept.* 26, 1889.

Received of George W. Cochran, Esq., a deposit of three hundred ($300) —, to be applied in part payment of the price of all of square 980, sold by him for 28 cents per sq. ft., on the following terms: ⅓ cash, bal. in 1, 2, and 3 years, with int. at 6 per cent., payable semi-annually; property sold as a good title or no sale; all taxes to be paid to November 30th, 1889.

The purchaser is required to make full settlement, in accordance with terms of sale, within 20 days from this date or deposit
126 will be forfeited.

J. T. DYER,
Agent for Julius Lansburgh and Others.

The same day, the testimony shows, Mr. Dyer reported the sale to Mr. Lansburgh in writing within half an hour after he had consum-ated the matter with Mr. Cochran by this letter.

WASHINGTON, D. C., *Sept. 26th*, 1889.

Mr. Julius Lansburgh.

DEAR SIR: I have sold to George W. Cochran, Esq., your square 980 for 28 cents per sq. ft.; ⅓ cash, balance in 1, 2, and 3 years; 6 per cent.; all taxes to be paid to Nov. 30th, 1889; title to be good and property free from all incumbrances. I have received a deposit of $300 to bind sale.

Very truly, &c., J. T. DYER.

Mr. Dyer says that he delivered this in person to Mr. Lansburgh within half an hour after the sale was consum-ated with Mr. Cochran, and that Mr. Lansburgh said that he was to- busy to attend to it, and requested him to see the other parties interested in the property. He mentioned Mr. Isaac L. Blout and Ryon and Tracy, and perhaps the other parties interested, Clark and Henry C. Tracy, and to say to them that he was perfectly satisfied with the sale.

There is some controversy between Mr. Dyer and Mr. Lansburgh over this interview as to the details, but I am convinced that Mr. Dyer's account of it is correct, not only because of the relation he bears to this litigation and the relation of Mr. Lansburgh, but because it was his business to be correct in such matters, and his knowledge of what transpired must be better than Mr. Lansburgh's. This Mr. Lansburgh might not have recollected, and it is confirmed by all of the facts of the case. On the same afternoon Mr. Dyer went to see Mr. Blout and eventually found him. Mr. Blout
127 then said that he would not be bound; that he had nothing to do with the sale; that he did not know that the property was offered for sale, and that he had not authorized any one to sell it, and that he would not be bound by it, but that he would see about it. The next morning Mr. Dyer saw Messrs. Ryon and Tracy and delivered to them a similar report in writing to that which he had given Mr. Lansburgh. I believe it is identical. I will read it.

WASHINGTON, D. C., *September 26th*, 1889.

Messrs. Ryon and Tracy.

D'R SIR-: I have sold square 980 to George W. Cochran, Esq., for twenty-eight cents per square foot—one-third cash, balance in 1, 2, and 3 years, 6 per cent.—and have received a deposit of $300.00 to bind the said sale. Property sold as a good title.

Yours truly, &c., J. T. DYER.

Thereupon Messrs. Ryon and Tracy wrote across the face of this paper, "Sale approved. Ryon and Tracy. September 27, '89." Mr. Dyer then took this paper to Mr. Lansburgh and, according to both parties, he said, "See what Ryon and Tracy have done. You do the same." Mr. Dyer says that Mr. Lansburgh turned around to his desk and wrote, "Approved: Julius Lansburgh." This was within half an hour after the approval of Ryon and Tracy. Some conversation then ensued as to the other parties who are interested in the property, and Mr. Dyer urged Mr. Lansburgh to see them and

procure their consent. He says that Mr. Lansburgh agreed to do this. Whatever was done, the fact is that these other parties did not consent to the sale and they were not bound by the act of selling, and the original bill was dismissed as against them.

Mr. Lansburgh says that at the time he wrote "approved" across the face of this letter he delivered it to Dyer, with the remark that his approval was conditioned upon Mr. Dyer obtaining the consent of all parties interested. It is objected that inasmuch as
128 that is not expressed in the writing it is not competent evidence. While it is competent ordinarily to prove a condition that is not of the essence of the contract, it appears to me that this is an essential part of the contract of sale itself. It is a matter that is outside of the expression of the contract itself, and is incompetent and inadmissible. It is well known that the memorandum of a contract must be sufficient and complete in itself, either in one paper or in several papers which necessarily refer to each other, which in their very essence are connected. Parol evidence cannot be received to make that connection apparent; then, if that is so, it is plain that Mr. Lansburgh cannot say that his approval was a conditional approval; but, considering that evidence as admissible, I think it is very apparent that Mr. Lansburgh is either mistaken or that he is wilfully *pre*verting the facts. Lansburgh put this property in the hands of Mr. Dyer for sale at twenty-eight cents a square foot. He says he told Dyer that he had an interest in the square only, and that others were interested. If that was so, Mr. Dyer, as a real-estate agent, in the exercise of due care in his business, would have entered on his books the fact that the owners of this square were Julius Lansburgh and others. It appears that he entered the name of Lansburgh only as owner. When Dyer reported the sale to Lansburgh, and at the time the sale was made, Dyer knew that Ryon and Tracy had also an interest in the square, and that is the reason for his signing the receipt as agent for Julius Lansburgh and others. At the time Mr. Dyer reported the sale to Lansburgh he did not express any disapproval or unwillingness to sell or want of authority to make the sale; he simply said that he was perfectly satisfied to make it, and that Mr. Dyer should go and see the other parties and report to them. After expressing this perfect satisfaction and Mr. Dyer had obtained the approval of Messrs. Ryon and Tracy, it seems rather incredible that Mr. Lansburgh should have approved this sale on condition that a ratification should be obtained of the others. He
129 had led Dyer and Cochran into this sale and he was bound by every consideration of honesty to carry it out, and I hardly conceive it possible that he could have approved the sale conditionally. I do not believe it, and in result it makes no difference whether the evidence is admissible or not; that is about the only controversy here upon the facts.

The case then rests upon the question whether or not the contract of sale for this square is binding on Lansburgh and whether theirs is a sufficient memorandum of the contract. This memorandum, in my judgment, contains all the essential elements of such a

contract. It contains the names of the parties, describes the premises, and gives the terms of sale and gives the price. The defendant did not urge upon the court that the memorandum was insufficient because the square is not located, but the argument on this point was made in anticipation by the complainant's counsel. I am satisfied that it is a sufficient description to locate it as square 980 without saying Washington, D. C. The receipt is dated Washington, D. C., and I think this is adequate.

But it is asserted that the contract of sale is not mutual; and it is urged in behalf of Lansburgh that because of this want of mutuality he is not bound by it. Well, it appears that prior to the filing of this bill the counsel for the complainant saw Mr. Lansburgh and told him that a suit was about to be instituted to compel the specific performance of the contract, and that Lansburgh then agreed to convey. There was some little difference about the terms upon which he should convey; whether Mr. Cochran would pay all cash, making a slight discount, or whether he would be able to adjust the terms according to what they are in this memorandum—that is, one-third cash and the balance in one, two, and three years. It was agreed by Mr. Lansburgh that he would meet Mr. Maddox, the counsel for Mr. Cochran, the next morning, and bring all the papers. In the meantime he saw counsel and telephoned Mr. Maddox that after consultation he had been advised that he need not comply with the terms of sale unless he desired to do so and he would not do so.

The difficult feature of this case is that alleged want of mu-
130 t-ality—not a want of mut-ality because the memorandum is not signed by Cochran, and the contract cannot be enforced against him. Although that objection has been sustained in many of the earlier cases, and as late in Maryland as the case reported in Gill and Johnson, yet I think it has been firmly settled that it is not essential that the memorandum shall be signed by the parties seeking to enforce it. The statute requires that the note or memorandum shall be signed by the party to be charged. The contract may be perfectly good, but when you come to enforce it, unless there is a note or memorandum signed by the party sought to be charged, the court will not afford relief. In this case the wand of mut-ality is alleged to be this: that inasmuch as Mr. Cochran contracted for the whole square and the entire interest in it and it cannot be delivered, the contract is not binding upon him, and is therefore not mutually binding upon the parties, and Lansburgh should not be held to his contract. It has been urged that there is only this exception to the general rule: that where a party undertakes to sell an entire interest, representing the property to be his own, and it transpires that he has not the entire interest, but that he has only a partial interest of some kind, the courts will, if the purchaser so elects, compel the specific performance of the contract to the extent to which the seller can convey, with compensation for the residue.

It is said that the rule cannot be applied in this case, because Lansburgh did not claim to own the whole square. I think the

evidence shows that originally Lansburgh failed to disclose the interests of a single of these parties except his own when he put it in Mr. Dyer's hands for sale. Afterwards Dyer discovered that Ryon and Tracy had an interest, and when he sold it for Lansburgh and others he sold the entire interest in the square, believing and so representing to Mr. Cochran that Lansburgh and Ryon and Tracy held and represented the entire interest in the square, so that there has been a sale or an attempt at a sale by an agent
131 of Lansburgh's, representing that the entire interest was vested in this way, and it transpires that Lansburgh has only a partial interest of one-third—a one-third equitable interest—and upon the principle which has just been referred to, inasmuch as he cannot deliver the entire interest, yet if Mr. Cochran elects to take the interest in the square that he has, a court should specifically decree a conveyance or assignment of Lansburgh's interest.

I have a case which apparently approaches this in the 12th Grattan, where the court did not hesitate to enforce specific performance of the contract of sale. It is at page 98, Clarke *et al. vs.* Reins. It seems that Reins was in possession of some lots of ground in a place called Sydney, near Richmond, and that the defendants in this proceeding, Caroline V. Clark, Emily W. Harris, David M. Branch, and Sarah E., his wife, brought an action of ejectment to recover possession, and thereupon it was agreed by an instrument in writing under the hands and seals of these defendants that the whole subject-matter should be referred to arbitration, and that on ascertaining the value of the land and the payment of the purchase-money the several parties would convey to Reins their interests. A difficulty arose in the case after the award was made ascertaining the value. Then the parties bound by that award declined to execute it, the difficulty being that, Mrs. Branch being a married woman, the court could not specifically enforce her contract. It was claimed by the other two that, inasmuch as the contract could not enforce against Mrs. Branch and Reins could not be compelled to take the property, the contract was not mutual and he could not elect to take the interest of Clark and Harris. The court reviews the authorities that were cited in behalf of the plaintiff, which it is unnecessary for me to read, and sums up the case on page 110:

"If the app-lee is willing to accept in satisfaction of the agreement a deed for the undivided interest of the appellees Clark and Harris in the lots, with an abatement of the purchase-money equal in value to the entire interest and estate of Mrs. Branch in the sub-
132 ject, I cannot conceive the injustice or inconvenience of allowing him to have such a modified performance of the contract. There is nothing in the proofs to impeach the fairness of the agreement or the award. There is not the slightest reason for imputing fraud or even laches to the appellee. He has promptly done or tendered to do everything which by the covenant or the award he has agreed or has been awarded to do. On the other hand, the appellants have wholly refused to conform to the award. They have resisted it on each side of the circuit court on grounds of objection which the judge has decided to be insufficient. Like objections

have been made here and have met with the same fate, and nothing stands in the way of affirming in everything the decree for a specific performance except the want of power in the court to coerce a conveyance of the estate of the married female appellant, a difficulty suggested here for the first time. In this state of things what show of equity have the appellants for insisting that because they cannot comply with their whole undertaking they shall also be excused from performing such portion of it as is clearly within their power?"

It is not necessary to read and review all the authorities which the court cites. The conclusion was that the case should be remanded with instructions to allow the appellee to take a conveyance by the appellants Harris and Clark, and also the interest of the husband less the interest of the wife, which she refuses to convey.

This is the conclusion which must be reached in this case, that Lansburgh undertook to sell this entire square. If he did not undertake to sell the entire square, he undertook to sell his interest in it and bound himself to convey his interest in it by the approval of this written evidence of the contract of sale, and that the complainant is entitled to a specific performance of the contract on his part, with an abatement proportionally. His interest, I believe, is one-third. Inasmuch as he has not the legal title, I suppose the decree should be for an assignment of his interest in that, at least, with costs.

ANDREW C. BRADLEY,
Associate Justice.

133 *Entry in Order Book* 12, *Page* 9.

COCHRAN *vs.* BLOUT *et al.* } 12133. Equity.

The clerk will please enter an appeal in this cause by the defendant Julius Lansburgh from the decree entered herein January 22, 1891.

LEON TOBRINER,
Solicitor for Lansburgh.

Jan. 23, '91.

Appeal, as ordered, entered.

BY THE CLERK.

'91, 1, 23.

Decree, General Term.

Filed March 15, 1892.

In the Supreme Court of the District of Columbia.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT *et al.* } Equity. No. 12133.

This cause coming on to be heard in general term upon the appeal of the defendant Julius Lansburgh from the decree passed herein the twenty-second day of July, A. D. 1890, and having been duly argued by counsel for the respective parties and considered by the court, it is, this fifteenth (15) day of March, A. D. 1892, ordered, adjudged, and decreed that the said decree be, and the same is hereby, reversed, and that the complainant's bill and amended bill be, and the same are hereby, dismissed with costs, to be taxed by the
134 clerk. Thereupon the plaintiff prayed an appeal in open court to the Supreme Court of the United States, which is allowed

By the court:

E. F. BINGHAM,
Chief Justice.

Bond for Appeal.

Filed March 25, 1892.

In the Supreme Court of the District of Columbia, the — Day of March, 1892.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, *et al.* } No. 12133. Equity.

Know all men by these presents that we, George W. Cochran and James L. Barbour, are bound unto the above-named Isaac L. Blout, trustee; James P. Ryon, and Julius Lansburgh in the sum of five hundred (500) dollars, to be paid to the said Isaac L. Blout, trustee; James P. Ryon, and Julius Lansburgh, their executors or administrators; to which payment, well and truly to be *paid*, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 24th day of March, 1892.

Whereas the above-named George W. Cochran has prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia, in general term:

Now, therefore, the condition of this obligation is such that if the above-named George W. Cochran shall prosecute his said appeal to

effect and answer all damages and costs — he shall fail to make good his plea, then this obligation shall be void; otherwise
135 the same shall be and remain in full force and virtue.

GEORGE W. COCHRAN. [SEAL.]
JAS. L. BARBOUR. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved the 25th day of March, 1892.

E. F. BINGHAM,
Chief Justice S. C., D. C.

136 *Order Enlarging Time for Filing Record in Supreme Court U. S.*

Filed April 13, 1892.

In the Supreme Court of the District of Columbia, in General Term.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, Trustee, and Others. } In Equity. No. 12133.

An appeal to the Supreme Court of the United States having been taken in open court from the final decree of this court, in general term, passed herein on the 15th day of March, 1892, and good cause having been shown to this court why the record cannot be prepared and transmitted to said Supreme Court of the United States within thirty days from the date of said appeal, it is, this 13th day of April, A. D. 1892, ordered that the time for filing said record in said Supreme Court be, and the same is hereby, enlarged to sixty days from the date of said appeal.

By the court:

E. F. BINGHAM,
Chief Justice.

137 *Opinion of Justice James, General Term.*

Filed April 30, 1892.

In the Supreme Court of the District of Columbia, in General Term.

GEORGE W. COCHRAN
vs.
ISAAC L. BLOUT, JULIUS LANSBURGH, and Others. } In Equity, No. 12133.

Mr. Justice JAMES delivered the opinion of the court:

In June, 1886, square 980, in Washington, was conveyed to the defendant Blout in trust, to sell either in whole or according to a subdivision to be made, provided that any subdivision and any sales should be approved by the signature of James P. Ryan. Blout executed a declaration of trust to the effect that he held the premises

for the defendants in the following proportions: For Julius Lansburgh two sixths, for Ryan and Tracy one-sixth, for Morris Clark one sixth, for Henry Tracy one-sixth, and for said Blout one-sixth. The transaction constituted what is commonly known as a syndicate.

Lansburgh possessed other real estate, and some time in January, 1889, placed in the hands of Dyer, a real-estate broker in Washington, a list of a number of pieces for sale, mentioning square 980 among them, and naming twenty-eight cents a foot as the price of the latter. Dyer testifies that nothing was said at that time about the ownership of that square, and that he took it for granted that Lansburgh was the owner. Lansburgh testifies that in giving the list referred to he specified to Dyer the properties which he owned entirely and those in which he had only an interest; that he stated that he owned only an interest in square 980, and gave Dyer the names of the syndicate. Some time in September of the same year, after holding this property about nine months, Dyer reported to Lansburgh an offer for a part of the square, and was then informed by the latter that others were also owners with him.

138

On one point there is no material difference between the statements of Dyer and Lansburgh; both show that Dyer was, at the time of the rejection of that offer and before he made any sale, advised that the consent of others besides Lansburgh would be requisite, and that Lansburgh had not undertaken to act separately as to his own interest.

What, then, was the extent of Dyer's authority to bind Lansburgh at this point of time? He was not authorized by the latter to sell square 980 as his sole property, and he was not authorized to sell any undivided interests separately. As his authority to act as agent for anybody had thus far been given only by Lansburgh, he must yet acquire or ascertain that through Lansburgh he had acquired authority from all the owners to sell that square as an entirety.

This was the state of things when Dyer showed the property to the plaintiff Cochran. He testifies that he informed Cochran that there were other owners besides Lansburgh, and named at least Ryan and Tracy. Cochran agreed to take the whole square at 28 cents per square foot and made a deposit of 300 dollars. Thereupon Dyer executed the following paper:

"WASHINGTON, D. C., *Sept. 26th*, 1889.

Received of George W. Cochran, Esq., a deposit of three hundred — ($300), to be applied in part payment of the price of all square 980, sold to him for 28 cents per sq. ft., on following terms:

⅓ cash, bal. in 1, 2, and 3 years, with int. at 6 per cent., payable semi-annually; property sold as a good title or no sale; all taxes to be paid to November 30th, 1889. The purchaser is required to make full settlement, in accordance with terms of sale, within 20 days from this date or deposit will be forfeited.

J. T. DYER,
Agent for Julius Lansburgh and Others."

It appears by the testimony of both Dyer and Lansburgh that this transaction was immediately reported to Lansburgh, but there is a conflict between them as to what took place in connec-
139 tion with it. Dyer states that Lansburgh told him to see the others and to say to them that he was satisfied with the sale, but did not say that he would have to see others before he, Lansburgh, could authorize the sale. Lansburgh states, on the other hand, that he told Dyer it would be necessary to get the approval of the rest before he would consent. The question seems to be whether Lansburgh's conduct authorized Dyer to understand and to convey to the plaintiff the understanding that he himself had authority to contract for the sale of all the interests. Upon the theory that he assumed to have such authority is based the claim that Lansburgh is bound to make good the sale so far as he had power to do so—that is to say, by at least conveying his own interest.

We think that the undisputed acts of Dyer at the time are important means of determining what Lansburgh had authorized him to believe to be his authority. It appears that on the day after reporting to Lansburgh the so-called sale of the whole square to the plaintiff, Dyer brought to Lansburgh a note in the following words:

"WASHINGTON, D. C., *September 26th*, 1889.

Messrs. Ryan and Tracy.

D'R SIR-: I have sold square 980 to George W. Cochran, Esq., for twenty-eight cents per square foot, one-third cash, balance in 1, 2, and 3 years, 6 per cent., and have received a deposit of $300 to bind the said sale; property sold as a good title.

Very truly, J. T. DYER.

Sale approved.

RYAN AND TRACY.

Sept. 26, 1889."

Lansburgh thereupon endorsed his approval. Afterwards Dyer sought out Blout and endeavored to obtain his assent.

We are of opinion that Dyer's own conduct shows that Lansburgh had not caused him to understand that Lansburgh held himself out either as owner of the whole of the square or as having authority from his co-owners to sell the whole of it. He had learned at the time of receiving an offer for a part of it, and therefore before
140 the transaction with the plaintiff, that Lansburgh did not pretend to have authority to decide for other owners. When he dealt with Cochran his proceedings in seeking the approval of the other owners were such as to show that he had not been led by Lansburgh to understand that the latter had authority to act for all the owners. On the other hand, these cumulative assents of the owners seem to us to indicate plainly that it was understood throughout the whole transaction that the sale of the square as an entirety would require such expression of assent.

Unless Lansburgh assumed to sell the whole square as his sole property or assumed that he was able to sell the whole because he was authorized by his co-owners so to do, the principle appealed to on the part of the complainant cannot be applied. In that case he is not bound by any principle of equity to make good his contract so far as he is able by conveying at least what he himself owned and could control.

In comparing the conflicting testimony of Lansburgh and Dyer it is to be remembered that the latter, as well as Lansburgh, is an interested witness, liable to remember conversations in conformity with his interests. Moreover, it is to be considered that in a suit for specific performance the alleged authority of the agent who signs the memorandum of contract must be clearly established.

In this case the denial by Lansburgh that he ever assumed to be sole owner or to have authority to act for all the owners is supported by the facts of the transaction; so that the allegation that he bound himself in any way to a sale of the whole is not only not made out, but is overcome by the proof. The original transaction is not alleged to have been an actual contract for the sale of Lansburgh's undivided interest separately, and, of course, the alleged subsequent contract to that effect being in parole would be invalid.

141 We are of opinion that there is no ground on which it can be held that Lansburgh has incurred an obligation to convey his interest separately. The bill is therefore dismissed.

CHARLES P. JAMES,
Asso. Justice.

142 UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein George W. Cochran is the complainant and Isaac L. Blout, Julius Lansburgh, James P. Ryon and Burr R. Tracy, partners, trading as "Ryon & Tracy;" Morris Clark and Henry C. Tracy are the defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 30th day of April, A. D. 1892.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,036. District of Columbia supreme court. Term No., 400. George W. Cochran, appellant, *vs.* Isaac L. Blout, trustee; James P. Ryon & Julius Lansburgh. Filed May 3rd, 1892.

Unless Lansburgh assumed to sell the whole square as his sole property or assumed that he was able to sell the whole because he was authorized by his co-owners so to do, the principle appealed to on the part of the complainant cannot be applied. In that case he is not bound by any principle of equity to make good his contract so far as he is able by conveying at least what he himself owned and could control.

In comparing the conflicting testimony of Lansburgh and Dyer it is to be remembered that the latter, as well as Lansburgh, is an interested witness, liable to remember conversations in conformity with his interests. Moreover, it is to be considered that in a suit for specific performance the alleged authority of the agent who signs the memorandum of contract must be clearly established.

In this case the denial by Lansburgh that he ever assumed to be sole owner or to have authority to act for all the owners is supported by the facts of the transaction; so that the allegation that he bound himself in any way to a sale of the whole is not only not made out, but is overcome by the proof. The original transaction is not alleged to have been an actual contract for the sale of Lansburgh's undivided interest separately, and, of course, the alleged subsequent contract to that effect being in parole would be invalid.

111 We are of opinion that there is no ground on which it can be held that Lansburgh has incurred an obligation to convey his interest separately. The bill is therefore dismissed.

CHARLES P. JAMES,
Asso. Justice.

112 UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein George W. Cochran is the complainant and Isaac L. Blout, Julius Lansburgh, James P. Ryon and Burr R. Tracy, partners, trading as "Ryon & Tracy;" Morris Clark and Henry C. Tracy are the defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 30th day of April, A. D. 1892.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,636. District of Columbia supreme court. Term No., 400. George W. Cochran, appellant, *vs.* Isaac L. Blout, trustee; James P. Ryon & Julius Lansburgh. Filed May 3rd, 1892.

Office Supreme Court U. S.
FILED.
DEC 9 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 116.

GEORGE W. COCHRAN, Appellant,

v.

ISAAC L. BLOUT, JAMES P. RYON and JULIUS LANSBURGH, Appellees.

BRIEF FOR THE APPELLANT.

SAMUEL MADDOX,
A. S. WORTHINGTON,
Solicitors for Appellant.

H. L. McQUEEN, PRINTER.

Supreme Court of the United States.

October Term, 1895.

GEORGE W. COCHRAN, *Appellant*,
v.
ISAAC L. BLOUT, JAMES P. RYON AND JULIUS LANSBURGH, *Appellees.*
} No. 116.

BRIEF FOR THE APPELLANT.

Statement of the Case.

In 1886, square 980, in the city of Washington, was conveyed to the appellee, Isaac L. Blout, who, at the same time, signed and delivered to various persons certificates showing that he held the property in trust for them. The appellee, Julius Lansburgh, received one of these certificates showing that he was the owner of a one-third interest in the square. The other owners were the firm of Ryon & Tracy (of which firm the appellee, James P. Ryon, was a member), Henry C. Tracy, Morris Clark, and Blout himself. These certificates provided that the property should be sold upon such terms as might be agreed upon by the parties in interest, "such agreement to be expressed by the written signature of James P. Ryon" (Record, 68, 69, 70).

On the 16th day of January, 1889, Lansburgh placed

this square, with other real estate in Washington, in the hands of Joseph T. Dyer, a real estate broker, for sale as a whole at 28 cents per square foot. Dyer at that time understood Lansburgh to be the sole owner of the property and so entered it on his books. Dyer both by board placed upon the property and by an advertisement in his bulletin informed the public that he had the property for sale (14). In September following Dyer received an offer for a portion of the square, but as his authority was to sell only the whole square, he reported the offer to his principal, Lansburgh, who then, for the first time, informed Dyer that there were other persons interested in the property (15).

A few days afterward—on September 26, 1889—Dyer, in pursuance of the authority from Lansburgh above stated and as agent for Lansburgh and others, received from the appellant Cochran $300 as a deposit on account of the purchase of the property, and as such agent signed and delivered to Cochran an agreement to sell him the square at the price authorized by Lansburgh—twenty-eight cents per square foot (65).

This contract is in the following words:

"WASHINGTON, D. C., *Sept. 26th*, 1889.

"Received of George W. Cochran, Esq., a deposit of three hundred dollars ($300), to be applied in part payment of purchase of all of square 980, sold to him for 28 cts. per sq. ft., on following terms: ⅓ cash, balance in 1, 2, and 3 years, with interest at six per cent., payable semi-annually; property sold as a good title or no sale; all taxes to be paid to November 30th, 1889. The purchaser is required to make full settlement in accordance with terms of sale within thirty days from this date or deposit will be forfeited. Conveyancing at purchaser's cost.

J. T. DYER,

"Agent for Julius Lansburgh and Others."

Dyer at once addressed a written notice to Lansburgh,

informing him of the sale (42), and (his office being only a few doors from Lansburgh's store) he delivered it to Lansburgh in person. This was on the day of the sale —September 26 (16, 29). On the following morning Dyer presented to Ryon & Tracy, at their office, a similar notice addressed to them. Mr. Tracy of that firm (in the presence of his partner, James P. Ryon, and at the latter's request) in writing on this notice approved the sale (17). Dyer then took it to Lansburgh who, also in writing, approved it. This notice with the approvals endorsed upon it is as follows:

"WASHINGTON, D. C., *September 26, 1889.*

"Messrs. RYON & TRACY,

"DEAR SIRS: I have sold square 980 to George W. Cochran, Esq., for twenty-eight cents per square foot, one-third cash, balance in 1, 2 and 3 years, 6 per cent. and have received a deposit of $300.00 to bind the said sale; property sold as a good title.

"J. T. DYER.

"Sale approved,

"RYON & TRACY, *Sept. 27th, 1889.*

"Approved,

"JULIUS LANSBURGH."

There was no third person present when Lansburgh signed this paper and delivered it to Dyer, and the principal question of fact involved in this case is as to what was said by Lansburgh at that time. Dyer testifies that Lansburgh's approval was unconditional in fact, as it appears to be upon the written instrument, while Lansburgh asserts that when he approved the paper and delivered it, he did so upon the verbal condition that it was not to bind him until concurred in by somebody else. It will be seen hereafter that there is a good deal of uncertainty on Lansburgh's own testimony as to just whose concurrence was required.

Blout and Clark, who each had a one-sixth interest in the property, declined to carry out the sale made by Dyer to Cochran. The firm of Ryon & Tracy, owning a one-sixth interest, and Henry C. Tracy, owning a one-sixth interest, were willing to carry out the sale as made.

After Lansburgh had learned that some of the parties in interest refused to convey, Cochran, through his attorney, Mr. Samuel Maddox, informed Lansburgh that he, Cochran, would take Lansburgh's one-third interest in the square and pay to him, Lansburgh, his proportional part of the agreed price. Lansburgh assented to this (28, 52). But the next morning Mr. Maddox was informed by an attorney whom Lansburgh had consulted in the meantime that Lansburgh would not make the conveyance (28).

A few days afterward the original bill in this case was filed. By it Cochran sought to have all the parties interested in the square compelled to specifically perform the contract made by Dyer and approved by Ryon & Tracy and Lansburgh. Blout and Clark filed answers averring that they had not authorized Lansburgh to act for them in the matter (6, 7, 8). Depositions were taken on both sides, and Cochran was unable to prove that Lansburgh had such authority from either Blout or Clark. Ryon & Tracy and Henry C. Tracy conveyed their respective interests in the square to Cochran.

In this state of affairs Cochran filed an amended bill against Lansburgh, Blout, who held the legal title as trustee, and James P. Ryon, whose signature was required to authorize the trustee Blout to convey. Proceedings against the other defendants were abandoned (64–71). Lansburgh answered the amended bill, averring that he had approved the sale with the understanding with Dyer that he must obtain the consent of Blout before his, Lansburgh's approval should take effect (75). Blout

in his answer averred ignorance on this point (73). Ryon answered expressing his willingness to sign any deed that Blout might make as trustee transferring Lansburgh's interest in the square to Cochran (72). Issue was duly joined on these answers (76). Some further testimony was then taken on behalf of the plaintiff. The case came on for final hearing in the Special Term of the Supreme Court of the District of Columbia, Mr. Justice Bradley presiding. He decided the questions in issue in favor of Cochran, and made a decree for specific performance by Lansburgh as to his one-third interest in the square (86, 87). The opinion of Mr. Justice Bradley is in the record (87 to 93). From this decree Lansburgh alone appealed to the General Term (93). In the General Term the decree of the Special Term was reversed and the bill dismissed (94). Mr. Justice James delivered the opinion of the Court in General Term, and that opinion also is in the record (95, 98). Cochran in open court appealed to this court from the decree of the General Term, and duly perfected his appeal (94, 95).

Assignment of Errors.

The court below erred:

1. In dismissing the bill and in not affirming the decree of the Special Term.

2. In holding that Lansburgh did not lead Dyer to believe that he, Lansburgh, either as owner of the whole of the square or as having authority from his co-owners, was empowered to sell the whole of it.

3. In not holding that Lansburgh's written approval of the sale was unconditional.

4. In holding that the agreement made by Lansburgh with Cochran, through the latter's attorney, Mr. Maddox, to stand by and complete, as to his, Lansburgh's one-third interest in the square, the sale which Dyer had made was void under the statute of frauds.

Argument.

The Facts.

Dyer, the real estate broker who negotiated the sale, testifies in substance as follows:

I have been a real estate broker for about twenty years, and have known the defendant Lansburgh six or seven years. I had some business with him in the latter part of 1888, which was conducted to his perfect satisfaction, and on the 16th of January, 1889, he came to my office with a list of certain lots which he asked me to sell at the prices given. Amongst these was square 980, and the price for it was 28 cents per square foot. Nothing was said about ownership, and I took it for granted that he was the owner. It is not customary for an agent to ask a man whether he is the owner or not. The property was entered on my books in the name of Julius Lansburgh and nobody else at all. I advertised it for sale in my bulletin and circulated it wherever I could. I also spoke to other real estate brokers about it and put my board on the square.

Subsequently an offer was submitted to me, and by me to Lansburgh for a sale of a part of the square, which was rejected (14). At that time he told me that he was not the only owner but he did not give me the names of the others. Very shortly thereafter I took Mr. Cochran out to see the square and sold it to him for 28 cents per square foot, giving him a receipt on account of the purchase money (16). On the way in from viewing the property, I told Cochran Lansburgh was the owner of the square, or one of the owners, and that I was dealing with him, though I believed Ryon & Tracy were one of the owners. I did not then know who the other owners were.

Within a very few minutes after I gave the receipt, I went over to Mr. Lansburgh's store, and handed him a written notice of the sale (42).

He read the notice over and told me he was very busy, and, therefore, wished me to see the other people and tell them that he was perfectly satisfied with the sale. I told

him that he had better see them as I only knew Ryon & Tracy. Lansburgh then said that Blout and Clark had just been at his store and that Clark had offered to sell his interest at 26 cents a square foot, and he asked me if I thought he ought to secure it. I told him it would not be exactly right.

I then went back to my office and notified Ryon & Tracy by telephone of the sale. Ryon asked me to see him about it. Then I started out to see Blout, whom I knew by sight. I met him on the street and told him of the sale. He replied that he would see about it (17).

Before starting out to see Blout I wrote a notice of sale for Ryon & Tracy and carried it down to their office, but the office was closed. I took it down again next morning and they approved it that day. Lansburgh also approved the sale across the face of the notice.

(It will be observed that in the notice to Lansburgh (42), Dyer refers to the property sold as "Your square 980," while in the notice of sale to Ryon & Tracy (18) he says simply "Square 980"; thus indicating that he did not then know what interest, if any, Ryon & Tracy had in the property.)

After securing the approval of Lansburgh, Dyer, continuing, says: "I did nothing after this towards securing the approval of Blout. I left the matter entirely to Mr. Lansburgh. I told him that he had sold this square in good faith and that it was for him as a business man and a gentleman to deliver it. He acknowledged that he had done so. After the kick commenced he said that he would acknowledge that he was in a bad place about it, and that he was in a hole; that he did not want to be mulcted for damages, commissions and everything of that sort in connection with the sale (18,19). Subsequently I tried to arrange the differences because I appreciated the position Mr. Lansburgh was in" (19).

On cross-examination Dyer says: "I told General Strong, owner of the building that Lansburgh had rented for his store, that he had placed in my hands a large list

of property for sale, as evidence of his (Lansburgh's) further responsibility. If Lansburgh had told me at the time he gave me the property for sale that he was only a partial owner it would have been so entered on my books. My book-keeper made the entries (20).

"I did not notify Blout or Clark in writing because I did not recognize them at all. Lansburgh told me he would see them himself (22), and Ryon told me he would get the papers and put them in the hands of an attorney to search the title. I let the matter rest there so far as I was concerned. I called upon Clark and saw Blout only once, the afternoon of the 26th (23).

"I discovered that Blout refused to sell from Ryon's telling me that he was kicking because he had not been consulted (24). When Lansburgh wrote his approval of the sale on the Ryon & Tracy notice not one word was said about my getting the approval of Blout or Clark" (25).

On re-direct-examination the witness says: "The property was put in my hands to sell as an entire square—as a whole. When Holtzman offered to buy a part of the square I told him that I was only authorized to sell the whole square at 28 cents but would submit any proposition he might make to purchase a part. I did not notify Lansburgh of Cochran's offer to buy the whole square before accepting his deposit. My book of property owners shows that square 980 was indexed in the name of Julius Lansburgh" (27).

Called as a witness in rebuttal, Dyer says: "I took the notice of sale to Lansburgh within half an hour after receiving the deposit, on the day the sale was made (29). When he approved the sale in writing next day there was no understanding that I was to get the approval of the trustees. He did not say anything of the kind in any manner, form or shape. On the contrary, he told me that he was perfectly satisfied that morning and wanted the matter fixed up and pushed through" (30).

Samuel Maddox, called in behalf of the appellant, testifies as follows:

"A few days before the bill was filed I called on Lansburgh and told him that I had been retained to file a

bill for a specific performance of the contract. He expressed his regret that any hitch had occurred and suggested that we should go to see Blout. While looking for Blout I told Lansburgh that Cochran would take his interest, whether the others sold or not, and might pay all cash if a small reduction was made. To this Lansburgh replied that he would go up and get the papers and bring them down next day. He asked me to have the money ready, which I told him I would do. We then separated, and half an hour thereafter I was informed by telephone from Mr. Tobriner's office, that Lansburgh was there, and that I would be further advised in the morning what Lansburgh would do. Next morning Mr. Tobriner informed me that Lansburgh refused to be bound by the Dyer contract of sale and would not convey his interest. I then, as solicitor for Cochran, filed this bill" (28).

These are the facts as adduced by the complainant Cochran in support of his prayer for the specific performance of the contract. The statement Mr. Dyer gives of the transaction is business-like, ingenuous and consistent, and he is corroborated by all of the circumstances and writings in the case, and by the conduct of all the parties, Lansburgh included. He says that Lansburgh gave him the whole square for sale, and his subsequent acts conclusively show the accuracy of that statement. Mr. Holtzman offered to purchase a part only, but having no authority in that behalf he submitted the offer to Mr. Lansburgh. Cochran's offer to purchase the whole square at 28 cents, on the contrary, was in exact conformity with Lansburgh's instructions to Dyer and was therefore accepted by Dyer and the contract signed without further consultation with Lansburgh.

The main point of difference between Lansburgh and Dyer is with regard to the condition which Lansburgh alleges he made at the time he approved the sale in writing, namely, that it was to be operative only in the

event that Blout would also approve the sale. Dyer denies that Lansburg signed or delivered the paper approving the sale upon any condition whatever and states positively that Lansburgh both on the 26th and 27th of September, expressed himself as being perfectly and unconditionally satisfied with the sale. It is not claimed that Dyer ever showed to Blout the Ryon & Tracy notice of sale whereon was indicated their approval, and also that of Lansburg, or that he saw Blout more than once—on the afternoon of the 26th, in deference to Lansburgh's request.

Now it will be remembered that Dyer was a real estate broker, and that compensation for his trouble in effecting the sale to Cochran, according to Lansburgh's answer, might depend upon his securing the approval of Blout. But he did not even make an effort to see Blout after Lansburgh had approved the sale in writing on the morning of September 27th. No trouble had occurred up to that time, and, so far as Dyer was advised, none of the co-owners objected to the sale being carried out. It is incomprehensible that Dyer rested from his labors after securing the written approval of Lansburgh, if his compensation had been made dependent upon his getting Blout's approval of the sale.

Lansburgh, on the other hand, was most industrious to secure the approval of Blout, continuing his efforts up to a day or two before the filing of the bill. He had authorized Dyer to sell the whole square, and Dyer, in pursuance of the authority so given, had entered into a contract of sale with Cochran. After this had been done, and after Lansburgh had approved the sale in writing, Lansburgh first learned that two of his associates, Blout and Clark, refused to part with their interests at 28 cents a square foot. He had no reason to anticipate such refusal because Clark, a day or two previous, had offered,

in the presence of Blout, to part with his interest for 26 cents a square foot, an offer which neither Lansburgh nor Blout took occasion to accept (40, 48). There was therefore no reason why he should not unconditionally approve the sale negotiated by Dyer. When he learned that Blout and Clark were holding back he did all in his power to induce them to comply with the contract Dyer had made. He did this because, as Dyer says "he acknowledged that he was in a bad place about it, and that he was in a hole; that he did not want to be mulcted for damages, commissions and everything of that sort in connection with the sale" (19).

From the acts and conduct of the parties the conclusion is inevitable that Lansburgh authorized Dyer to sell square No. 980 as an entirety and when so sold approved the sale.

The contention of the appellee rests entirely upon the testimony of Lansburgh, which is shuffling and evasive and in contradiction of his written unconditional approval of the sale. His attempted explanation of Dyer's act in selling the whole square without first consulting him—"It was certainly his place to find out whether I had authority to sell before closing"—(55), is absurd. He is anxious to get out of syndicates, but when asked why he did not get out of this one, having an opportunity to do so at a figure satisfactory to himself, he declines to answer the question. He is contradicted by Dyer in all the material points of his testimony; he is contradicted by his own witness, Blout (59), in stating that the latter was present at his store when Clark offered to sell his interest at 26 cents (59); he contradicts the date of his approval of the sale in writing on the Ryon & Tracy notice by saying that he did this on the afternoon of the 26th when, as matter of fact, he never saw that notice till the morning of the 27th.

Altogether Lansburgh's attitude in this transaction, as disclosed by the record, is far from enviable. To say nothing of his refusal to perform his contract, as far as he can, we find him urging his associates to do that which he himself subsequently declined to do. When told by Dyer that the latter had sold the square at 28 cents a foot, the thought occurred to him that it would be well to secure Clark's interest at 26 cents a foot, before he could hear of the sale. An honest man would never have entertained such a thought. His account of this incident is as follows: "I said to Mr. Dyer that Mr. Clark had offered me his interest for 26 cents, and asked him if he thought it would be right for me to buy up that interest and make the difference between 26 and 28 cents. Mr. Dyer told me that he did not think it was right because the sale had then been made" (54).

Lansburgh's various accounts of what he told Dyer in January, 1889, about the ownership of the square are irreconcilable. In his answer to the original bill (9), he expresses it "particularly stating to said Dyer that he merely owned an interest therein."

In one place in his deposition, when asked who were meant when he referred Dyer to the trustees (50), he says: "I meant Ryon & Tracy and Mr. Blout. I was under the impression that Ryon & Tracy were trustees and Mr. Blout. I did not know that Mr. Ryon of the firm of Ryon & Tracy was a trustee. I thought that they were both trustees, and I told Mr. Dyer that Mr. Blout was a part owner at the time when he first came to see me with an offer for part of the square."

In another place he says (53): "I gave him the names of each and every party at the time he first came to me after the sale. Prior to that time I only said I was interested in it jointly with others. I do not know that I gave him the names of the parties at all at the time I

made the memorandum for him of the property I had for sale."

In another place he becomes argumentative and says (42): "Ryon & Tracy were one of the trustees, because I had referred him to the same parties in regard to the sale of part of the square on the day before, which showed, to my mind, plainly that he must have known that I was not the entire owner of square numbered 980."

Equally significant are Lansburg's contradictory statements as to what he said to Dyer concerning the willingness of the other owners to sell the land at 28 cents per foot.

In his original answer (9), he says he told Dyer that "he thought twenty-eight (28) cents per square foot might be accepted by the syndicate owning the same in purchase thereof." In his deposition (46) he says: "I told Mr. Dyer at the time that I thought the syndicate would take 28 cents a foot for it." In another place, on the same page, when asked why he believed Blout would take 28 cents he replied that when an offer of 25 cents had been made they (the owners) thought it ought to bring 30. Yet he had already testified (R., p. 38): "I was positive the syndicate would take 28 cents a foot; at the time I so stated to him; I knew they would."

When he attempts to explain his written approval of the sale, Lansburgh's statements are still more inconsistent and contradictory. In his answer to the original bill he says (10): "That on the 26th day of September, Dyer informed me that he had sold square 980 at 28 cents per square foot, and requested me to approve said sale. Defendant refused to do so, said he had no authority to approve said sale in the first instance, that he should first obtain the consent of the trustee, in whom the title to said real estate was vested. Said Dyer subsequently returned to defendant, saying that he had the approval

of Ryon & Tracy, that defendant should approve, and that he would then obtain the approval of the *said trustees*, and the other parties interested. The defendant consented to approve the same on condition that the consent of such other parties should be obtained before the approval was to take effect."

In his answer to the amended bill (75) he says Dyer brought him the Ryon & Tracy notice, approved by them, and requested me "to sign the same so that he could obtain the signatures of *defendant Blout* thereto."

In his deposition he says (53): "The letter showed that Mr. Dyer came to me for my signature and I referred him to the trustees, and told him that I only had an interest in the property and that I would only approve it after *Ryon & Tracy* had put their signature to that piece of paper."

It is impossible to determine from all this whose consent must have been obtained to gratify the condition upon which Lansburgh alleges he, in writing, approved the sale. In his answer to the amended bill he places his defense upon the ground that he signed subject to Blout's approval. He testifies that he signed it subject to the approval of Ryon & Tracy. His answer is therefore disproved by his own testimony.

But it will be remembered that Dyer testifies that he took over to Lansburgh's store, within half an hour after he received the deposit, a similar written notice addressed to Lansburgh himself, and that Lansburgh then verbally approved the sale. To break, if possible, the force of this, Lansburgh says his notice of sale came by mail on the morning of the 27th (42). He repeats several times that it was the Ryon & Tracy notice he saw on the 26th. "It was the same day, the same afternoon, on the afternoon of the 26th" (49) that he approved the sale in writing. Being referred to the Ryon & Tracy

notice, Exhibit W. H. S., No. 2 (18), he says: "He (Dyer) showed me the paper on the afternoon of that day, September 26, 1889" (38).

But the sale was not approved by Ryon & Tracy till the morning of the 27th, so the notice Lansburgh saw the day before could only have been the one Dyer took over in the afternoon, when the remarkable conversation occurred about the purchase of Clark's interest. There was no other time at which that conversation could have taken place. Even Lansburgh would not have dared to suggest buying Clark's interest at 26 cents a foot, after his associates, or some of them, had been told of the sale at 28 cents.

More extraordinary still are Lansburgh's two explanations of his reasons for approving the sale on the Ryon & Tracy notice. One is this: "*I was not selling my interest, I only approved the sale of the whole square*" (40). The other: "*Dyer knew perfectly well that I only had an interest in the square, and, when I approved it, I only approved it for part and not for the whole square*" (52).

It is difficult to understand why Lansburgh finally refused to convey his interest as he agreed to do in his conversation with Mr. Maddox. Even he can give no honest explanation of such refusal, as is manifest from the following extract from his deposition (49):

"Q. Would it have made any difference to you whether Mr. Blout or Mr. Clark sold his interest?

"A. It would have made no particular difference to me.

"Q. It made no difference whatever?

"A. It made no difference to me at that time; no. I may state right here that I was very desirous of getting out of the syndicates that I was in, because they gave me a good deal of trouble and annoyance, and rather than have a law suit, as you said you were going to

bring suit, I was satisfied to sell my interest and get out even if I lost money by it.

"Q. Then why did you not do it?

"A. I do not see what—I refuse to answer that question."

We think we are justified in concluding from this review of the evidence that Lansburgh did authorize or undertake to authorize Dyer to sell this property at tweny-eight cents per square foot; that after Dyer had made the sale to Cochran he, Lansburgh, both verbally and in writing, approved the sale without any condition whatever; that after he learned that Blout and Clark were going to stand out for a higher price, he changed his mind and sought to escape the consequences of his acts by inventing a false account of his conversation with Dyer when he gave to the sale his approval in writing; that when he found he was likely to be sued he changed his mind again and agreed to stand by his bargain whether Blout and Clark did or not; that after he had made this agreement with Mr. Maddox he made his way to a lawyer's office and (doubtless after misstating to his counsel the facts in the case) being advised that he was not bound, changed his mind once more; and that after being brought into court, he attempted to manufacture a story that would be consistent with all these changes of position on his part. The usual and natural result followed. In attempting to make things agree which could by no possibility stand together he has exhibited himself to the court as an artful dodger, gathering his testimony, not from his recollection, but from his wits, and answering each question, not as the facts required, but as he, at the moment, thought would be most to his interest. We submit that he is utterly unworthy of belief and that the case should be determined on the testimony of Dyer and the undis-

puted written evidence showing that the sale was made and that Lansburgh approved it.

The Opinion of the Court Below.

An examination of the opinion of the Court in General Term (95–98) will show that it is based solely upon the fact that Dyer, when he made the sale to Cochran, knew that other persons were associated with Lansburgh in the ownership of the property. The matter is discussed in that opinion as though the question were whether Dyer's contract of sale was binding until approved by all the co-owners.

Of course, if that were the question, there would be an end of the case, because it has never been pretended on Cochran's behalf that Dyer's signature to the contract with Cochran would have bound even Lansburgh if the latter had owned the entire square. A sale made by a real estate broker under such circumstances entitles him to recover his commissions from his principal, but it does not bind the principal to convey the property to the proposed purchaser.

The case against Lansburgh rests upon his written approval of the sale to Cochran. Lansburgh and Dyer are agreed that Dyer was authorized by Lansburgh to put the square on the market at 28 cents. No question is made that Dyer by a sign placed upon the property and in other ways notified the public in general, and Lansburgh's co-owners particularly, that the property was in his hands for sale. And certainly Dyer was not bound to find out whether Lansburgh was in fact authorized by his associates to put the property in his (Dyer's) hands for sale at 28 cents. All he was concerned about was his commission, and as he could not bind Lansburgh or any of the other owners, whether Lansburgh had authority or not,

by anything that he himself might do, he was not called upon to make any inquiry of anybody, because if Lansburgh instructed him to make a sale at that figure and he made it, he was entitled to his compensation from Lansburgh.

Much stress is laid in the opinion of the General Term upon the fact that shortly before the sale to Cochran, Dyer had received an offer for a part of the square and had reported it to Lansburgh before undertaking to accept it, and had then been advised by Lansburgh that Ryon & Tracy and others were interested in the property. Referring to this matter the court below says (97): "When he (Dyer) dealt with Cochran his proceedings in seeking the approval of the other owners were such as to show that he had not been led by Lansburgh to understand that the latter had authority to act for all the owners. On the other hand these cumulative assents of the owners seem to us to indicate plainly that it was understood throughout the whole transaction that the sale of the square as an entirety would require such expression of assent." That is to say that if A entrusts property to B for sale as an entirety on certain terms, and B, receiving an offer for only a part of the property, on different terms, reports that offer to A for his approval before closing the transaction, that is evidence that a sale made in strict conformity with the authority given, was also to be subject to such approval. This seems to us to be a very plain fallacy, yet upon this reasoning solely the decision of the Court in General Term was based.

In the opinion in question it is said that in comparing Lansburgh's testimony with Dyer's it must be remembered that the latter is an interested witness. We respectfully submit that he had, and has, no interest whatever in the result of this case. He is not a party to it and will not be bound by the decree in it. His claim for

commissions would form the proper subject of a suit at law in his own name against Lansburgh, and that would be determined by a jury unaffected entirely by the result of this suit.

Questions of Law not Considered by the Court Below.

1. There is no question at this day that one who has made a valid agreement in writing to sell real estate and give a good title, if his title prove defective as to a part of the land only, may be compelled in equity to perform the contract so far as practicable by conveying such title as he has with an abatement of a part of the purchase money to compensate the vendee for the defect in the title. It has sometimes been urged by the defendant in suits of this kind that there is no mutuality in this because he could not compel the vendee to take anything less than was bargained for. This objection, however, has always been overruled. The matter is thoroughly discussed in Irwin *v.* Myers, 46 Pa. St., 106. On the general doctrine that equity, as against the vendor will allow the purchaser an election to proceed with the purchase *pro tanto*, see

1st Story's Equity Jurisprudence, 779.
3d Pomeroy's Equity Jurisprudence, Sec. 1407, note 3.
Fry on Specific Performance, ~~4~~ Sec 1222 et seq.
Hepburn *v.* Dunlop, 1 Wheat., 200.
Mortlock *v.* Boller, 10 Vesey, Jr., 292–315.
Burrow *v.* Scammel, L. Rep., 19 Ch. D., 175–183.
Waters *v.* Travers, 9 John., 45.
Bogan *v.* Doughdrill, 51 Ala., 312.
Lancaster *v.* Roberts, 33 N. E. Rep., 27 (Sup. Ct. Illinois).
Towle *v.* Fire Ins. Co., 91 Mich., 219.

2. It seems to be also settled that where several joint owners agree to convey real estate and performance of the contract by one or some of them is impracticable the others may nevertheless be compelled to convey their individual interests. Of course, if there were a separate contract with each joint owner there could be no question about this, and it is hard to see why it should make any difference that they sign a single instrument, as in substance and legal effect the agreement of each is separate as to his individual interest. Accordingly, where several tenants in common had contracted to sell and one had died, it was held, that while the survivors could not have enforced specific performance against the vendee, yet he could compel the survivors to carry out the contract so far as their interests were concerned. (Attorney-General *v.* Grover, 1 Vesey, Sr., 218). So, in Clark *v.* Reins, 12 Grat., 110, where one of the contracting vendors was a married woman who could not be held to her agreement, the others were required to convey. In Horrocks *v.* Rigby, L. R., 9 Ch. D., 180, two had agreed to sell and convey a tract of land. The vendee was advised that there was a mortgage on the property and that it covered the interests of both parties, and he was to take subject to the mortgage. It turned out that one of the parties had no interest whatever in the property; that the other owned only a moiety; and that the whole incumbrance in question was upon this moiety. Yet, in a carefully considered opinion, delivered by Mr. Justice Fry, it was held that the vendee was entitled to specific performance as to this moiety and to an abatement of the purchase price of that one-half to the amount of one-half the mortgage.

3. Certainly the case is stronger against one who has agreed to convey the whole and turns out to have but an undivided interest. This was the case in Burrow *v.* Scam-

mell, L. R., 19 Ch. D., 175. That was an agreement for a lease for a term of years, and it was found that the lessor, who had assumed to be the sole owner, in fact had but a moiety. He was compelled to perform, as to his moiety, and to take one-half the stipulated rent.

A striking illustration of the principles for which we contend is Bogan *v.* Daughdrill, 51 Ala., 312. In that case one of the vendors, Bogan, had put his contract in writing in the form of a bond containing a covenant to convey on payment of the purchase money. This paper was lost before the vendee began his suit for specific performance. Both upon the pleadings and the evidence it was left in doubt whether Bogan's covenant was to convey the entire title or only an undivided one-half interest in the property. The court say:

"The legal effect of the bond for title, so far as it can enter into the decree sought in this case, is the same whether it covenanted to convey the entire title or only the title of the covenantor."

4. The burden of proof is upon Lansburgh to show, by at least a fair preponderance of the evidence, that his written approval of the sale was qualified, as he claims, by a cotemporaneous verbal condition to the effect that the approval was not to take effect until it had been concurred in by Blout. In his answer to the amended bill he says he signed the approval "with the distinct and positive understanding with said Dyer that he must obtain the consent of the defendant Blout to said sale before this defendant's approval should take effect." He is required to prove not *a* condition but *this* condition. We have seen (*supra*, pp. 13, 14) how inconsistent are Lansburgh's own statements as to whose approval it was that he stipulated for. This alleged verbal qualification of the writing in question. And assuredly upon all the evi-

dence nothing more can be claimed for Lansburgh than that there is a doubt as to whether or not he stipulated for Blout's approval, and here arises an important question of law which we do not find discussed in any of the cases. This court has on several occasions held that the rule excluding parol evidence to contradict a written contract does not apply where the parol evidence is offered to show that the contract was not to take effect until the happening of a certain contingency. It has been very earnestly contended that this doctrine opens the door to all the evils which it was the purpose of the statute of frauds to prevent. To support the decree below, however, this court must go a step further and hold that one who has entered into a written contract may, when sued upon it, escape by simply averring that he had a cotemporaneous verbal understanding that the contract was not to take effect until something further should be done and then compelling the other party to prove that there was no such condition. We respectfully submit that the doctrine here invoked in regard to verbal conditions as to the time written contracts shall take effect should be applied only where the alleged verbal condition is clearly established and if the matter be involved in doubt the writing must stand. In this case we think no one can read and weigh the testimony of Dyer on this subject and compare it with Lansburgh's testimony without being convinced that Dyer's statement of the matter is correct. But, clearly, no one can read it and be satisfied that Lansburgh's story is true, and if the alleged verbal condition be left out of the matter altogether the case stands upon a written contract made by Dyer on behalf of Lansburgh and others unqualifiedly approved by Lansburgh himself, and this will bind him at least as to his interest.

5. But aside from all this, the testimony of Mr. Maddox

and of Lansburgh himself show that if there was any such verbal condition it was subsequently waived by Lansburgh. He agreed to convey his individual interest and actually arranged to meet Mr. Maddox at Mr. Cochran's place of business next day to close the transaction. The court below disposed of this agreement with the observation that being in parol it would be invalid. But in this the court over-looked the fact that there was already a written contract and that it bound Lansburgh unless his assertion as to the parol condition was true. That condition, according to Lansburgh's answer was that he should not be bound until Blout should also sign. Now if he could qualify the written contract by this verbal arrangement is it possible that he could not orally waive the verbal condition? This would make an agreement by word of mouth more sacred than one in writing.

SAMUEL MADDOX,
A. S. WORTHINGTON,
Solicitors for Appellant.

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Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE W. COCHRAN, APPELLANT,
vs.
ISAAC L. BLOUT, JAMES P. RYON AND JULIUS LANSBURGH, APPELLEES.
No. 116.

BRIEF FOR APPELLEES.

A. B. DUVALL,
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For Appellees.

Law Reporter Print.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE W. COCHRAN, APPELLANT,
vs.
ISAAC L. BLOUT, JAMES P. RYON AND JULIUS LANSBURGH, APPELLEES.
No. 116.

BRIEF FOR APPELLEES.

In September, 1889, the title to all of square numbered 980 in the city of Washington, District of Columbia, was in Isaac L. Blout, in and upon the following trust among others:

> "In trust to sell the same either in whole or according to such subdivision of said square as may be made, and convey the same in fee simple to the purchaser or purchasers, who shall not be responsible for the application of the purchase money—provided, however, that any subdivision of said square and any sales thereof in part and in whole that may be made by the said party of the second part (the said Blout) shall be approved by James P. Ryon who shall signify such approval by signing said subdivision and all deeds made by the said party of the second part, to purchaser or purchasers; and the proceeds of said sale or sales apply as set forth in a certain declaration of these trusts bearing even date with these presents and executed by the said party hereto of the second part."

At that time, according to a declaration of trust executed by said trustee, bearing date the 1st day of June, A. D.

1886, the equitable interest in the said real estate was held in the following proportions: the said trustee one-sixth, Henry C. Tracy, one-sixth; Morris Clark, one-sixth; the firm of Ryon & Tracy (consisting of James P. Ryon and Burr R. Tracy), one-sixth; the defendant in error, Julius Lansburgh, one-third. In January, 1889, it appears that the defendant Lansburgh, placed in the hands of one J. T. Dyer, a real estate broker in Washington, a list of a number of pieces of real estate for sale, mentioning square number 980 among them. Dyer testifies that at that time nothing was said with respect to the ownership of the various parcels of ground, *he assuming* that Lansburgh was the sole owner of all of them; Lansburgh, on the contrary, testifies that he specified those which he owned solely and those in which he had only an interest. This difference, however, we take it, becomes immaterial inasmuch as Dyer testifies that before he entered into the negotiation involved in this litigation he was advised by Lansburgh that there were others interested in the property and so informed the appellant. Dyer testified. (Record, 14–15.)

> "Q. When did you first speak to Mr. Lansburgh subsequently about the sale of the property?
>
> "A. I had occasion to see him at one time. Mr. Holtzman asked me about what the square could be bought for, and I gave him my price. He afterwards asked me if two hundred feet square could be had at the corner of 11th and I streets. I spoke to Mr. Lansburgh about it, and he said 40 cts. I went back and reported to Mr. Holtzman and he made a proposition of 30 cts., which upon consultation with Mr. Lansburgh, was rejected. My own suggestion to him at the time was that I might be able to get 35 cts.
>
> "Q. Was anything said at this interview about the ownership of the property?
>
> "A. I think that at that time he told me that he was not the entire owner of the property, and that he would have to see others, but he did not mention the names of the owners at the time."

Subsequently on September 26, 1889, Dyer, describing himself, and signing as "Agent for Julius Lansburgh and others," executed and delivered to the appellant, the receipt for $300 as part payment of the purchase money of all of said square (Record, 16). He testifies as follows:

> "Q. At that time which one of the owners of the square did you know?
>
> "A. I knew then who the owners were.
>
> "Q. Before that.
>
> "A. I will come to that in a minute or two. After I gave that receipt I at once went over to Mr. Lansburgh's store and notified him that I had made this sale. I notified him in writing. He turned to me and said, 'Dyer, I am very busy here.' It was, as I said, a little while ago, when he was busy moving into his new place. He said, '*I am very busy and I wish you would see the other people and tell them that I am perfectly satisfied about this sale.*' *I said, 'Mr. Lansburgh, I only know Ryon and Tracy. I don't know these other gentlemen. It would be better for you to see them.' He told me to see them and tell them that he was satisfied with the matter*, and that it would be all right. I went back to the office and notified Ryon and Tracy through the telephone. Mr. Ryon told me I had better see him. In the meantime, though, I started out to find Mr. Blout."
>
> See, also, Rec. 21.

Dyer further testifies that upon the next morning he handed a written notice of such sale (Record, 17 and 18), to Messrs. Ryon & Tracy and asked them to approve it. That Mr. Ryon approved it for the firm, and that he then carried it back to Mr. Lansburgh's store, and said to him "*Mr. Lansburgh, here is what Ryon & Tracy say; you do the same.*" That thereupon Mr. Lansburgh took the paper and wrote upon the bottom thereof, "Sept. 27, '89, approved, Julius Lansburgh."

The trustee Blout and the other parties in interest having refused to confirm the sale, the appellant on November the 14th, 1889, filed his bill against Lansburgh and the other parties in interest alleging a contract entered into by their duly authorized agent for the sale to him of all of square 980. After answer thereto had been filed and testimony taken in support of the issue thereby made, and the cause was on calendar for trial, complainant on motion and affidavit obtained leave to dismiss his original bill and file an amended bill, abandoning his suit so far as the interest of the defendant Blout and Clark were concerned, and prosecuting for a specific performance of the contract with respect to the interest of the defendant Julius Lansburgh, to wit, an undivided equitable one-third—

> "offering to take the whole square according to the agreement originally made with the said Joseph T. Dyer, or the interest in said square, so as aforesaid owned by said defendant, Julius Lansburgh, in accordance with the subsequent note or memorandum of said agreement so as aforesaid made by said Julius Lansburgh on the 27th day of September, A. D. 1889."
>
> Record, 67.

Upon the hearing of the cause at special term a decree was entered against the defendant for specific performance with respect to his undivided one-third equitable interest. Upon appeal from said decree to the general term the decree of the special term was reversed and complainant's bill dismissed.

With respect to the approval of Lansburgh, upon which the appellant seems to rely, Lansburgh in his answer to the amended bill (Record, 75) says:

> "On the 27th day of September, A. D. 1889, said Dyer brought to him a notice similar to that set out in said paragraphs (9 and 10) addressed to said

> Messrs. Ryon & Tracy, at the same time informing defendant that he had sold said real estate, requesting him to approve said sale. Defendant informed said Dyer that he should obtain the approval of the trustees who had authority to make a sale and if such consent was obtained, that he would have no objection thereto; that said Dyer then left the office of defendant, and in a short time returned, showing to this defendant the endorsement of said Ryon & Tracy, as in paragraph 9 set forth, and requested this defendant to sign the same so that he could obtain the signature of defendant Blout thereto. Defendant did sign the same, but with the distinct and positive understanding with said Dyer that he must obtain the consent of the defendant Blout to said sale before his, the defendant's, approval should take effect, and that the sale was of the entire interest of said square, not an individual interest; and defendant emphatically denies that the said sale was ever made as of individual interest or that he ever intended to approve or did approve of a sale of his individual interest only."

He also testifies (Record, 40) that—

> "When I approved the sale it was an understood thing that he (Dyer) was to get the approval of trustees and everybody connected with it before I would give my signature, but at the earnest solicitation of Mr. Dyer, after he got Ryon & Tracy's signature to it, I put my name to it, he promising to see Blout that same afternoon or the next day, I forget which. . . . I was not selling my interest, I only approved the sale of the whole square."

On the part of Mr. Dyer it is denied that any condition was annexed by Mr. Lansburgh to his approval of the sale, but it is most respectfully submitted that upon an examination of the testimony of Mr. Dyer and his cross-examination when testifying in rebuttal for complainant (Rec. 31) it will appear that the version of Mr. Lansburgh as to the trans-

action is the true one, to wit, that his approval of the sale was of a sale of the whole square, not of any individual interest, and was only given for the purpose of enabling Mr. Dyer to obtain the consent of the trustee Blout, who alone had authority, with the approval of Ryon, to make a sale of the property, and this is the conclusion arrived at by the court below, after an exhaustive examination of the facts in the case.

ARGUMENT.

It is submitted, that the appellant is not entitled to the relief he seeks.

First. Because the contract sought to be enforced was a mere option for twenty days, and the appellant failed to exercise his option during the time limited.

Second. Because the contract sought to be enforced is not mutual.

Third. Because the contract sought to be enforced was never entered into, assented to, or intended to be assented to, by Lansburgh.

APPELLANT WAS IN DEFAULT UNDER THE CONTRACT.

The so-called contract (Record, 16) of September 26, 1889, was a mere option for 20 days. Time was of its essence. It expressly provided—

> "The purchaser is required to make full settlement in accordance with the terms of sale within twenty days from this date or deposit will be forfeited. Conveyancing at purchaser's cost."

Cochran took no steps whatever to perform his part of the contract. Dyer notified him that the owners repudiated his authority, and Cochran saw Dyer several times about the matter; he says, (Record, 83) that despairing of

getting the owners through Dyer to conform to the contract, on October 17, 1889, he put the receipt on record. At that time he knew nothing about the title and had not then had it examined. But Dyer's agency is conceded in appellant's brief (page 17) to have terminated with the finding of a purchaser. It will be remembered that Dyer had been informed by Blout on the evening of September 26, that (Rec. 57) Lansburgh had no authority to sell without his consent, he being the trustee, and he had not consulted wfth him about it; that the sale was not all right and was not satisfactory. Dyer doubtless informed Cochran of this repudiation and of the repudiation by Clark as well as by Lansburgh. Dyer testifies (Rec. 22–23) that Ryan told him that he would see Blout and get the papers and give them to him to put in the hands of an attorney to search the title, and he let the matter rest there so far as he was concerned. The occasion of Cochran's recording the receipt was that (Rec. 26) Dyer notified him that there was a disposition on the part of certain owners of the property to back out of the sale and he could only protect his interest by putting the receipt on record.

Cochran testified (Rec., 84) as follows:

> "Q. How long after you had placed this receipt on record did you authorize Mr. Dyer to take the individual interest of Mr. Lansburgh?
>
> "A. Yes, sir. I think it was before I placed the receipt on record. I also authorized Mr. Maddox before I placed that receipt on record to take Mr. Lansburgh's undivided one-third interest and I would pay for it.
>
> "Q. How long a time after the receipt was placed on record?
>
> "A. That I cannot say, sir.
>
> "Q. *How long after you had accepted the receipt; about how long?*
>
> "A. *It may have been three, four, or five weeks. I cannot say.*"

(This it will be noticed was after the option had expired.) On redirect examination, he was asked :

> "Q. Refresh your recollection by looking at this receipt and the date of the record ?
> "A. Well, then, of course, it was prior to the 17th day of October."

Cochran says (Record, 79) between September 26 and November 14, 1889, he had repeatedly called on Dyer and told him he was ready and willing to comply with his terms at any date and urged him to have the parties execute the title. It was the fault of the owner or owners that the transaction was not closed in the time limited in the receipt. Lansburgh says (Record, 52) negotiations were going on for about a month from September 26, looking to getting Blount and Clark's consent to the Dyer sale; he says further (Record, 43), there was not at any time during September or October, a tender made to him of the purchase money of the square or for his individual interest.

In reference to the alleged sale of Lansburgh's individual interest, Mr. Maddox testifies (Rec. 28), that several days before the bill was filed he went to Lansburgh and told him Cochran had retained him to institute suit for the specific performance of the contract made by Dyer; that Cochran was ready to comply with his contract; that he walked up to Blout's with Lansburgh, and on the way back he said to him that Cochran would take his interest whether the others sold or not; he would pay all cash, perhaps, if a little deduction was made. Lansburgh in reference to this interview states (Rec. 41–50), he told Maddox that rather than have a law suit he would sell his interest; and Maddox said that if he would come to Mr. Cochran's office the next morning he felt almost sure a sale could be made of his interest. That that was the first time his individual interest was discussed.

It is manifest that the appellant for $300.00 purchased a twenty day option on a square of ground in the City of

Washington valued at more than $23,000.00. This option expired on October 16, 1889; on the following day he caused the same to be placed among the land records for the District of Columbia. During the life of this option he did not even have the title examined to ascertain to whom he was to pay the purchase money, if he concluded to exercise his right of purchase under the option; he did not even seek out or inquire who the purchasers were to whom he was to make payment; he contented himself with notifying Dyer (who it is conceded was not the agent of any of the owners), that he was ready at any time; though he knew from the first that Lansburgh was one of the owners he did not so much as call on him for information; there can be no pretence that he offered to him or any of the other owners, any compliance whatever with the contract. After he had forfeited all rights by the very terms of the option and was in default under the contract he now seeks to enforce, he for the first time "several days before the bill was filed," which must have been in November, communicated with any of the owners. He went to his lawyer, Mr. Maddox, who undertook to resuscitate this dead contract for him, and he called on Mr. Lansburgh; under the threat of a suit, he induced Mr. Lansburgh to entertain a proposition to sell his interest; but the terms were not agreed upon, no contract was made and Lansburgh declined to be forced into a sale.

In Richardson *vs.* Hardwick, 106 U. S. 252, a written contract or option gave the complainant the privilege to become equally entitled to an interest in the land by paying one-half the purchase money within two years after its date. The contract of itself did not vest him with any interest or estate in the land. Says the court:

> "It is clear from the terms of the contract that Richardson was not bound by it. He did not agree to purchase any share in the land or to pay Hardwick any money. The contract gave Hardwick no

cause of action against Richardson. The latter was not bound to become interested in the land, or to pay any money thereon, unless he chose to do so.

"In suits upon unilateral contracts, it is only where the defendant has had the benefit of the consideration for which he bargained that he can be held bound.

"In this case, Richardson having failed to pay the money or any part of it within the time limited, the privilege accorded him by the contract was at an end, and all the rights under it ceased."

WANT OF MUTUALITY.

The rule laid down in the text books and supported by the courts of highest resort is that—

> "To entitle a party to specific performance there must not only be a valid and binding agreement, but as a rule the contract at the time it was entered into *must have been capable of being enforced by either of the parties against the other.* In other words there must be mutuality both as to the obligation and the remedy. It follows that a party not bound by the agreement itself has no right to call upon the court to enforce performance against the other contracting party by expressing a willingness in his bill to perform his part of the agreement. It is immaterial what constitutes the want of mutuality, whether resulting from personal incapacity, from the nature of the contract, or from any other cause. Whenever the absence of the essential element is ascertained to exist on the part of one of the contractors *and for that reason is incapable of being enforced against him,* he will be equally incapable of enforcing the contract against the other party."

Waterman on Specific Performance, Sec. 196.
Fry on Specific Performance, Sec. 440.
Marble Co. *vs.* Ripley, 10 Wall. 339.
Richardson *vs.* Hardwick, 106 U. S. 252.

Geiger *vs.* Green, 4 Gill. at 476.
Luse *vs.* Dietz, 46 Iowa, 205.
Bronson *vs.* Cahill, 1 McLean, 21.
Snyder *vs.* Nefuss, 53 Barb. 63.
Price *vs.* Griffith, 1 DeG., M. & G. 80.
Bodine *vs.* Glading, 21 Pa. St. 50.
Peacock *vs.* Dewee, 73 Ga. 570.
Cooper *vs.* Pena, 21 Cal. 401–410.
Maynard *vs.* Brown, 41 Mich. 298.
Boucher *vs.* Van Buskirk, 2 A. K. Marsh. 345, 346.

"A court of equity will never decree performance where the remedy is not mutual, or one party only is bound by the agreement."

Kent, Chancellor, in Parkhurst *vs.* Van Cortlandt, 1 John. Ch. 274–282.

Says Johnson, Chancellor, in Duvall *vs.* Meyers, 2 Md. Ch. 404:

"In other words, as I understand the decision, the right to a specific execution of a contract, so far as this question of mutuality is concerned, depends upon whether the agreement itself is obligatory upon both parties, so that upon the application of either against the other the court would coerce specific performance."

In Lawrenson *vs.* Butler, 1 Sch. & Lef. 18, the doctrine is stated by Lord Redesdale as follows:

"I have no conception that a court of equity ought to decree a specific performance in the case, except where both parties had by the agreement, a right to compel a specific performance, according to the advantage which they might be supposed to have derived from it, because otherwise it would follow that the court would decree a specific performance where the party called upon to perform might be in this

> situation, that if the agreement was disadvantageous to him, he would be liable to the performance, and yet if advantageous to him, he could not compel a performance. . . . No man signs an agreement but under a supposition that the other party is bound as well as himself; and, therefore, if the other party is not bound, he signs it under a mistake."

And in Marble Co. *vs.* Ripley, 10 Wall. 339, 359, Mr. Justice Strong, speaking for the court, says:

> "Another reason why specific performance should not be decreed in this case, is found in the want of mutuality. Such performance by Ripley could not be decreed or enforced at the suit of the Marble Company, for the contract expressly stipulates that he may relinquish the business and abandon the contract at any time on giving one year's notice. And it is a general principle that when from personal incapacity the nature of the contract *or any other cause, a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other*, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former."

In a number of cases similar to the case at bar, the Court of Appeals of the District of Columbia has applied the same doctrine.

In Jones *vs.* Holladay, 2 Appeal Cases D. C. 279, 288, the court holds that a receipt similar to the one in evidence herein—

> "*Is not a mutual contract of purchase and sale.* It is nothing more than the sale of an option, running the unreasonable period of two months and a half to purchase property worth $80,000 *upon a forfeit of $500 if not exercised within that time.*"

In Jenkins *vs.* Locke, 3 Appeal Cases D. C. 485, the receipt relied upon as evidence of the contract sought to be

specifically performed, was in its provisions in the exact language of the receipt given by Dyer. Says the court in dismissing the bill:

> "There is an entire want of mutuality in the alleged agreement. It is not a contract of sale which might have been enforced by the defendant had she ratified the act of the agent. It was nothing more than the sale of a thirty day option."

Lipscomb *vs.* Watrous, 3 App. Cases D. C. 1, was a case where the receipt was similar to that in the case at bar. The court there says (citing Marble Co. *vs.* Ripley):

> "And such being the case, as the agreement has not been signed by the appellant as purchaser, in the event of the failure of performance on his part, the appellees would be without remedy by way of specific execution of the contract, as against the appellant, except to the extent of the right to insist upon a forfeiture of the small deposit according to the terms of the agreement. In such case the familiar principle applies that a court of equity will never decree a specific performance where the remedy is not mutual or one party only is bound by the agreement."

It appears from the evidence of Mr. Dyer that the complainant, whilst negotiating for the purchase of the whole square, had notice that Lansburgh was not the owner of the entire title.

The testimony of Dyer with respect to this fact is as follows (Record, 15):

> "Q. What was said at that time, if anything?
>
> "A. Well, while that thing was sort of on the carpet, that negotiation, I took Mr. Cochran out one afternoon.
>
> "Q. Do you mean Mr. George W. Cochran, the complainant in this suit?
>
> "A. Yes, sir. Mr. George W. Cochran, I drove him out that way and showed him the ground. I drove

him all around it and I saw he was interested in the thing. He asked me what was the price of it, and I told him 28 cts. a foot. He asked me if that was the lowest that would buy it, and I told him it was. After we got away from the square a little further, probably two squares from this block, he said to me, Dyer, I will take that square, if that is the best you can do. I said, Mr. Cochran it is no use to make any offer on this square, and then I told him of the offer which had been rejected.

"Q. You mean this offer of 30 cts. a foot for the corner?

"A. Yes, sir. I think he asked me the question about who owned it and I told him Julius Lansburgh was the man I was dealing with, and that I represented him, and that he was the owner of the property, or *one of the owners, and that I believed Ryon & Tracy were also one of the owners.* He went to my office and made a deposit on the square and I gave him a binding receipt for it."

In addition to this testimony, the very receipt taken by appellant from Dyer, showed that Lansburgh was only interested in the property with others, Dyer signing as "*Agent for Julius Lansburgh and others.*"

There is no contention on the part of the appellant that Lansburgh entered into a contract for the sale of the whole property or title *representing it, or agreeing to sell it as his own.* The most that can be contended against him is that he gave his approval to a sale of the whole square. Can it then be contended that in a case like the one at bar, *where a vendee has full notice and information* that a number of persons are interested in the title to the property, and where there is no positive or express undertaking on the part of the owner of an undivided interest to convey or sell the whole title, that there is such a representation as to ownership or title as will enable a proposed purchaser to enforce a specific per-

formance against such owner of a moiety when the other parties in interest refuse to confirm the sale.

It is said in Fry on Sp. Perf., Secs. 452, 1222.—

> "Where the vendor has not substantially the whole interest, which he contracted to sell, he cannot enforce the contract against the purchaser, and yet the purchaser can generally enforce it against him by compelling him to convey what he can, with an abatement of the purchase money as compensation for the deficiency."

But this is only enforced where the vendor holding but a moiety, enters into a contract for the sale of the whole, representing it and agreeing to sell it, as his own.

Fry on Sp. Perf., Sec. 1223 *et seq.*
Price *vs.* Griffith, 1 DeG., M. & G. 80.

This is the rule laid down by Lord Eldon in Mortlock *vs.* Buller, 10 Vesey, Jr. 315. Says the Lord Chancellor:

> "I also agree if a man, having partial interests in an estate chooses to enter into a contract *representing it and agreeing to sell it as his own*, it is not competent to him afterwards to say, though he has valuable interests, he has not the entire interest; and therefore the purchaser shall not have the benefit of his contract. For the purpose of this jurisdiction the person contracting under those circumstances is bound by the assertion in his contract, and if the vendee chooses to take as much as he can have, he has a right to that, and to an abatement; and the court will not hear the objection by the vendor, that the purchaser cannot have the whole. *But that always turns upon this; that it is, and is intended to be, the contract of the vendor.* My opinion is that this was not the contract of Mr. Buller; *that it was not in the contemplation of the agent, the trustees, or any one,* excluding the plaintiff, *that it should be the contract of Mr. Buller, if it was not the contract of the trustees.*"

In the case at bar it was not " in the contemplation of the purchaser " that he was contracting for or intending to purchase simply undivided moieties in the property.

The rule announced in Mortlock *vs.* Buller, is subject, however, to this exception—

> "where the purchaser, at the time of the contract, *knows of the limited interest* of the vendor he will not be able to insist upon a conveyance of such interest, with compensation."
>
> Vol. 2, Pt. 2, White & Tudor, Leading Cases, 1071 (4th Edition).
>
> Adams' Eq. 90.
>
> Knox *vs.* Spratt, 23 Fla. 64.

In Castle *vs.* Wilkinson, 5 L. R. Ch. App. 534, a husband and wife agreed to sell the wife's estate in fee simple *the purchaser being aware* that the estate belonged to the wife, and the wife afterwards refused to convey. It was held by the Court of Appeal in Chancery that the purchaser could not compel the husband to convey his interest and accept an abated price.

> "On the face of the agreement," said Lord Chancellor Hatherly, "the husband and wife intended to sell, and the purchaser knew that he was contracting with them for the estate of the wife, and that he could only get what the wife was willing to convey; and there is no authority at all approaching to such a proposition as it has been necessary to contend for here that the husband can be compelled to part with his partial interest in the estate, the agreement being by him and his wife to convey the whole. The latest authority, Barnes *vs.* Wood, 8 L. R. Eq. 424, before Vice-Chancellor James is in strict conformity with the other authorities . . . namely, *that where a man proposes to convey the whole of an estate, as owner of the fee simple*, and it turns out that he is only entitled *pur autre vie* and that his wife has the remainder, there the court can insist on his making

> good his contract to the extent to which he is able to make it good, and he must submit to an abatement of the consideration to be paid *for that which he improperly alleged he was capable of selling.* Since the case of Emery *vs.* Wase, 5 Ves. 846, the whole matter has been settled, and as the purchaser has chosen to file his bill *with a full knowledge of the law and facts,* his bill must be dismissed."

"And it appears to be immaterial that the purchaser has constructive notice of the limited interest of the vendor."

In James *vs.* Litchfield, 9 L. R. Eq. 51, a vendor contracted to sell certain property which the purchaser knew to be in the occupation of a tenant, and it was afterwards discovered by the purchaser that the tenant had a lease, it was held by Lord Romilly, M. R., that the purchaser was not entitled to specific performance with compensation.

Says the court in that case—

> "I think also, that no distinction can properly be drawn in a court of equity, on the ground that the matter rests in contract, and that the conveyance of the legal estate has not been made to him. The purchaser bound himself by the contract. He must be taken to have had present to his mind all those things of which he had notice, and those things which necessarily flow from, and were incidental to that notice. He knew that Allen was tena land; he was bound to inquire what th was, unless he was willing to be bound b ancy, whatever it was. The bill must be with costs, unless the plaintiff elects to take the property without compensation."

It may then, we submit, be safely asserted that there is no general or well established rule for specific performance with proportionate abatement.

In the cases cited by the appellant, the vendor assuming to sell the entire title appears to have intentionally or consciously misrepresented his title.

Irwin *vs.* Myers, 46 Pa. St. 106, was where two owners of land separately made a sale of their respective interests; possession had been delivered and most of the purchase money paid. The dicta of Lord Eldon in Mortlock *vs.* Buller, 10 Ves. Jr. 315, usually cited as authority for the supposed rule are set out, *supra*.

Hepburn *vs.* Dunlop, 1 Wheat. 179, was a complicated case in which, upon setting aside contracts many equities were adjusted in a series of cases, some on a second appeal so far as it touches the doctrine of specific performance it only goes to the question of the ability of the vendor to make a title at any time before the decree.

In Burrow *vs.* Scammel, L. R. 19, Ch. D. 175, the plaintiff had entered into possession of the premises, and laid out considerable money in alteration before it was discovered that defendant had title to only one moiety of the property and furthermore it appeared that the defendant was willing to execute the lease if the court should so decree.

In Waters *vs.* Travis, 9 John. 45, the court held that the relief would be granted although the vendor had incapacitated himself from conveying the whole.

Spencer, J., says (465):

> "Wherever it has been applied, as far as my researches go, it has been to a case where the person called into equity to perform, has the ability of performing the whole, and where the other party was desirous of collecting a part of the subject matter, and taking it unencumbered by another."

Clark *vs.* Reins, 12 Gratt. 110, was decided by a majority of a divided court, and is difficult to reconcile with Bailey *vs.* James, 11 Gratt. 475.

In Horrocks *vs.* Rigby, L. R. 9, Ch. D. 180, as also in Burrow *vs.* Scammel, *supra*, and in Bogan *vs.* Daughdrill, 51 Ala. 312, the purchaser was without knowledge or notice that the vendor had only a partial title; and in each of these cases there was present some superior equity.

The able and industrious counsel for appellant have presented no case, and it is believed none can be found, awarding specific performance, where the purchaser had knowledge or notice at the time of the purchase that the vendor had not full title. The authorities are believed to be uniform that under such conditions relief is denied.

We suppose that Towle *vs.* Fire Ins. Co. 91 Mich. 219, and Lancaster *vs.* Roberts, 33 N. E. Rep. 27, are cited on the subject of the alleged waiver of the condition by Lansburgh ; the court will observe, however, that in the latter case, want of mutuality in the contract was held to defeat the relief as against the vendors, who could not enforce it.

AS TO THE FACTS.

And now referring to the somewhat intemperate and altogether unjustified attack by appellant upon Mr. Lansburgh, we have only to say that the same is not sustained by the record. Counsel for appellant may feel incensed and chagrined because Mr. Lansburgh has testified against the interest of their client, and because the court below believed him rather than Mr. Dyer; but this, we submit, is no justification for such an attack. And we accordingly invite the most careful scrutiny of the evidence, confidently expecting that this court will reprobate such an uncalled for assault.

There are two issues of fact between Lansburgh and Dyer.

1st. Did Lansburgh represent to Dyer that he owned the whole square or that he was authorized by the owners thereof to sell the whole square?

2d. Was there any understanding between them as to when Lansburgh's approval was to take effect?

As to the first issue, Dyer testifies that when the property in controversy was put in his hands with other property nothing was said as to ownership; that he took it for granted that Lansburgh was the owner (14). Lansburgh says that he advised Dyer at that time that he only had an interest in square 980 (38). Upon cross-examination Dyer is asked (20):

> "Do you remember that in that conversation he pointed out to you several pieces of property on the list in which he merely had an interest as a member of a syndicate owning the property?
>
> "A. *I don't think he did.*
>
> "Q. Will you swear that he did not?
>
> "A. *I think I can swear* that he did not; *yes, sir, I was under the impression* that Mr. Lansburgh was the owner of the property." . . .

Upon his direct examination (14) he says, referring to the offer made by Holtzman for part of the square, "I spoke to Mr. Lansburgh about it and he said 40 cents." Upon cross-examination, after having testified that the first intimation that he had that others were interested, was when he reported the Holtzman offer; he says (21):

> "When I went to see him about that 200 feet he promptly said, right off, 40 cents; *he believed 40 cents a foot would buy it.*"
>
> "I took Mr. Lansburgh for what he is—a man of business, and I thought he would not offer property if he was not authorized to offer it for sale."

Dyer in his examination in chief would make it appear that Lansburgh deceived and mislead him; that he represented himself as the owner, and that he (Dyer) acted altogether under the direction of Lansburgh and made the sale upon Lansburgh's authority; that this is not so appears from his cross-examination at page 21.

"Q. Before you made the sale to Mr. Cochran did you get any authority from anybody else but Mr. Lansburgh to make it?

"A. I had had, I think, one or two talks with Mr. Ryon at the suggestion of Mr. Lansburgh in connection with the offer that had been made.

"Q. That was the offer of 30 cts. from Holtzman.

"A. Yes, sir; and Ryon said it was useless to talk about a part of the ground. He said, you had better go ahead and sell the whole of it.

"Q. At the time that you had this conversation with Mr. Ryon did you know that Mr. Blout and Mr. Clark were interested in the property?

"A. I did not know them by name.

"Q. Did you make any inquiries from Mr. Ryon as to the other parties in interest and who they were.

"A. I did not. The first time the names were mentioned to me was the day Mr. Lansburgh told me who the owners were, and he then mentioned that Mr. Blout and Mr. Clark had just left his place."

Right here Dyer corroborates Lansburgh, who says (38–41):

"I mentioned each and every piece separately. I told him I only owned a portion of this one or that one. I told him that Square No. 980 was owned only by me in part and not as a whole, that a syndicate owned that property. I never heard anything from Mr. Dyer until about after eight months afterwards, when he came into my place and said he thought he could sell a hundred or two hundred feet square at 35 cts. a foot. I thereupon told him that so far as I was concerned *I was not willing to sell a portion of it, but that he could call upon Ryon and Tracy and Mr. Blout, and if they were satisfied to sell I would not stand back. I referred him to the trustees.* He left me and came back afterwards and told me that he had seen Ryon and Tracy and they refused to sell a portion of that square at any price, but would be willing to sell the whole of it. That is what Mr. Dyer told me."

Dyer admits that he had "one or two talks" with Mr.

Ryon, at the suggestion of Lansburgh, and, that Ryon refused to sell a part but said he "had better go ahead and sell the whole lot." If, as he says (21):

> "I did not recognize anybody in the transaction but Mr. Lansburgh; I was acting for him solely in the matter,"

why was it necessary that he should have these frequent consultations with Ryon? If he looked upon Lansburgh as his principal solely, why was it necessary that he should immediately after signing the receipt for three hundred dollars, and having notified Lansburgh verbally, return to his office, notify Ryon & Tracy by telephone; then, also, write a notice of sale to them (Rec. 17) and carry it to their office, which he found closed, but which notice he served the next morning upon them personally? If Dyer's version is true, what business had he to do with Ryon & Tracy; why should he be in correspondence with them?

There is no other evidence in the case as to Dyer's authority but that of Dyer. He is flatly contradicted by Lansburgh, who is corroborated by the surrounding circumstances, and inasmuch as our friends on the other side lay so much stress upon the "burden of proof" we say right here, that when they allege that Lansburgh represented himself as the owner of the whole title or that he had authority from the other owners to sell, that the burden is upon them to prove that he did so represent; not only to overcome his answer but also his testimony, and this they have, according to the rules of evidence, utterly failed to do.

AS TO THE CONDITIONAL APPROVAL.

This again makes a question of veracity between Dyer and Lansburgh. With respect to his approval, Mr. Lansburgh says, in substance:

> "Mr. Dyer brought to me a notice of the sale addressed to Ryon & Tracy and asked me to approve

it. I told him to call upon the trustees and get their approval. He thereupon left me, and, to the best of my knowledge half an hour or an hour elapsed when he returned to me and said that he had got the approval of Ryon & Tracy, and he asked me to put my signature to it, which I did. I asked him whether he had seen the other trustees, and he told me no. He asked me to approve the sale. I thereupon told him that it was necessary to get the approval of them before I could give my consent. He said that he could not meet Mr. Blout that afternoon, and he asked me whether I would see him. I told him that I was so busy that I could not attend to these matters, as I was just moving into my store, and he had better see him himself. He promised to see him. Mr. Dyer came into my place three or four times after that and asked me whether I would not go and see Mr. Blout and have the thing arranged. I told him that I had seen Mr. Blout and that he positively refused to sell. He thereupon asked me if it would not be best for us to have a meeting of the syndicate and get them to ratify the sale as made. I thereupon had Mr. Blout and Mr. Ryon and Mr. Tracy and myself at the office of Ryon & Tracy, and we talked the matter over but Mr. Blout refused to sell. He told me to see Blout as I had more influence with him than he (Dyer) had, and he thought it was best for me to see him."

"When I approved the sale it was an understood thing that he was to get the approval of the trustees and everybody connected with it before I would give my signature, but at the earnest solicitations of Mr. Dyer, after he got Ryon & Tracy's signature to it, I put my name to it; he promising to see Blout that same afternoon or the next day, I forget which (40); I was not selling my interest; I only approved a sale of the whole square."

"Subsequently, a few days before the bill in this suit was filed, I met Mr. Maddox; he told me that he was retained by Mr. Cochran to bring a suit against me and the other owners of square 980, for a specific

performance of the contract. We went up to see Mr. Blout to try to get him to sell his interest. He was not in. On our way back to the postoffice to find him, I told Mr. Maddox (41) that rather than have any law suit about the matter I would sell my interest. Mr. Maddox told me that *if I would come* to Mr. Cochran's office the next morning *he felt almost sure that the sale could be made of my interest.* I thereupon promised Mr. Maddox that I would be there the next morning with my papers. After leaving Mr. Maddox I called upon my lawyer, Mr. Leon Tobriner, and he advised me that if I did not desire to sell not to do so. I thereupon telephoned Mr. Maddox not to do anything in this matter until he saw me. I gave him to understand that I would not be at Mr. Cochran's office the next morning with my papers. This was the first time my individual interest was discussed. I do not know of any other time that I was ever asked to convey my interest. With respect to the sale of the two hundred feet square, I told Mr. Dyer, so far as I was concerned, I would not sell a portion of the square, but to see the trustees, and if they were willing to sell, I would not stand back; but whatever they agreed to do I would agree to do. It was on the same condition that I signed the approval, because when he came to me with respect to the sale of Square No. 980, I referred him, as I had done in the other, where only a portion of the square was at stake, to the trustees. To the best of my recollection Mr. Dyer told me that he had seen Mr. Blout. I do not know when it was. It may have been a month after that, but I can't recollect that. He said that Mr. Blout would see about it, and he asked me to see Mr. Blout and see what I could do with him. During the months of September and October there was no tender made to me of the purchase money of Square No. 980 or for my individual interest."

On cross-examination, he says:

"I always said I was only part owner of this property to whomsoever I mentioned the property. I

was never authorized to sell and no arrangement was had between us (the syndicate) to sell at any certain price. I gave Mr. Dyer to understand *that I thought* 28 cents a foot would be a price that the syndicate would be willing to sell for; I did not assume any authority at all. I told Mr. Dyer at the time that I only had an interest in this, and I thought that the syndicate would take 28 cents a foot for it; that was my very language."

"After this sale was made by Mr. Dyer I had a number of conversations with Mr. Ryon. The purport of it was that Mr. Ryon said he could not afford to do without selling his pro rata interest here; that he was in the real estate business, and that it would look very badly for him if he did not sell if Mr. Cochran wanted his interest; that as Mr. Cochran had not come up to see him he was going down there and see Mr. Cochran and give him until 12 o'clock the next day to make up his mind to pay for his interest in the property, and if he did not do it he would call the thing off. He advised me to do the same. I thereupon called upon Mr. Cochran and Mr. Cochran kind of waived me off, saying that he had placed it in the hands of his attorney" (48).

It will be observed by the court that the assignment of interest by Ryon & Tracy to Cochran filed as an exhibit (page 80) bears date the 30th day of December, 1889, and purports to have been acknowledged the 6th day of January, 1890. This was long after the institution of the proceeding in this cause.

"I went to Blout and Clark several times at the solicitation of Mr. Dyer and on account of my own desire to close the matter out. If they were satisfied I was satisfied, but they told me the price was entirely too low and that they could get more money for it, and they positively refused to sell. I did not recommend them to accept the offer. Ryon & Tracy told me that they were going to offer their interest to Mr. Cochran. When I saw Mr. Maddox

and Mr. Blout at the postoffice I may have said to Mr. Maddox that it was best for all hands to join in a deal to settle the matter; I do not recollect it but I may have said it. The reason that I refused to sell my interest to Cochran when he offered to take my interest separately and leave Blout and Clark out was that if the property had gone down instead of up Mr. Cochran would not have bought the property, and as long as I was not compelled to sign away my interest, not having sold an interest, I did not see why I should sell. When I referred Mr. Dyer to the trustees, I meant *Ryon & Tracy and Mr. Blout. I was under the impression that Ryon & Tracy were trustees and Mr. Blout.* I did not know that Mr. Ryon, of the firm of Ryon & Tracy, was the trustee, I thought they both were trustees. (56.) I told Dyer that Mr. Blout was a part owner when he first came to me with an offer for a part of the square. I told him that he would have to see the trustees; I told him who were the trustees. When I had the conversations about this affair with Mr. Maddox at the postoffice, I agreed to sell my interest on the terms he indicated rather than to have a law suit. He stated to me that he was going to bring a suit against me and I did not want to have anything to do with a law suit. I concluded rather than to have a suit that I would sell my interest. He thereupon told me that if I would meet him at Mr. Cochran's office the following morning he felt sure that a sale would be made of my interest in it to Mr. Cochran and he would give me my pro rata share, but he stated at the time that owing to the one-third payment being made in cash and the balance in one, two and three years, he did not know how to work it, and he thought that if a discount was to be taken off I could receive all cash. At that time Mr. Maddox led me to believe that Mr. Cochran would take my interest at the price named, but he did not say positively that he would, and for that reason he told me to meet him on the following morning at Mr. Cochran's office and that he would very likely settle the matter there. I did not understand that Mr. Maddox had

power from Mr. Cochran to make that direct offer to me (51). I think it was the day after the receipt was placed upon record that Mr. Dyer and Mr. Blout met at Ryon's office. Negotiations were practically going on all the time until I saw Mr. Maddox at my store (52). I went about twice to Mr. Bout to get him to sell. I was very busy at the time. I was just moving into a large store and it required all of my time and attention. The reason that I desired to obtain the consent of Mr. Blout and Mr. Clark was this: Mr. Dyer insisted upon it that I was liable to him for the transfer of this property which he claimed I had given him for sale and for which he had gotten a purchaser, and that it was my duty as a man to see that the sale went through. He placed it in such a way that I felt it my duty to see Blout and Clark and get them to agree to the sale. I do not think that Dyer was right about it. Mr. Dyer knew perfectly well that I only had an interest in the square, and he knew when I approved it I only approved it for a part and not for the whole square. He knew at the time that I must have been only a part owner because the letter that he brought to me for signature was addressed to Ryon & Tracy, and that shows that he knew that Ryon & Tracy must have been one of the parties to be consulted before the sale could be made. The letter showed that Mr. Dyer came to me for my signature and I referred him to the trustees and told him that I only had an interest in the property and that I could only approve it after Ryon & Tracy had put their signature to that piece of paper. If I gave that property to Mr. Dyer as a whole, why did he not bring a letter addressed to me? Why did he bring a letter addressed to Ryon & Tracy and get me to approve it?

The defendant Isaac Blout testifies in substance as follows (57):

"I did not know Mr. Dyer. I met him once, and not knowing him he handed me his card and said to me that his name was Dyer. I would not know

the gentleman if I were to see him now I don't suppose. It was out in the northeastern section of the city, near the corner of Second and, I think, Massachusetts or New York Avenues in the latter part of September, 1889. It was in the evening and I was on my way home, near the place stated, and some one drove up in a buggy and called me by name. I stopped. He said, 'I want to see you a moment.' With that he put his hand in his pocket and handed me a card. It was a card with the name of Dyer and some one else on it. He said, 'my name is Dyer. I have sold square No. 980 at 28 cents.' I said, 'upon whose authority?' He said, 'upon the authority of Mr. Julius Lansburgh.' I said 'that is news to me. Mr. Julius Lansburgh has no authority to sell it without my consent, I being the trustee. He has not consulted me anything about it.' *He said, 'oh, well, that is all right I suppose you are satisfied.' Says I, 'No, sir, I am not satisfied.' Then I left him.*"

On cross-examination he says—

"I went to see Mr. Lansburgh the following afternoon. I says, 'Julius, who gave you authority to sell that square?' And I related the circumstances of the conversation. I said, 'Who gave you authority to sell?' He said, 'excuse me, I did not sell. I sold with the condition that you were satisfied. *You know very well,' says he, 'that I can't sell unless you give your sanction.'* I was subsequently asked to go to Ryon and Tracy's office. The only thing that transpired there was that there was some talk with regard to effecting a settlement. What shape or form it took I never was told. I answered that I had nothing at all to settle."

We submit that Mr. Dyer is again contradicted by Mr. Lansburgh, and emphatically so by Mr. Blout; and when we place in juxtaposition the evidence of Mr. Dyer, upon cross-examination, with respect to the reasons for his hunting up Mr. Blout, we think that we are justified in submitting that the facts are as Mr. Lansburgh explains them to

have been, to wit, that he approved the sale at Mr. Dyer's suggestion, but only upon condition that he should obtain Mr. Blout's consent. It is to be remembered that Mr. Dyer himself testifies that, upon the evening of the 26th inst., he called upon Mr. Blout. Dyer says (Rec. 17):

> "It was the first time that I had ever spoken to the gentleman. I told him that I had sold square 980, and that Mr. Lansburgh had told me to tell him that he was perfectly satisfied about the sale, and he asked me to tell him that it had been sold. He said, 'what did you get for it?' I said, 'twenty-eight cents.' He said, 'I will see about it.' I then asked him if he was going home, and I said, 'if you will get into my wagon I will drive you home.' He said, no, that he would take the car. So I bade him good afternoon and left him. *He did not say a word to me at all about Mr. Lansburgh having no authority to put the square in my hands for sale.*"

This is very materially different from the evidence given by Mr. Blout with respect to what took place between him and Dyer, and the action of Mr. Blout throughout the whole matter in refusing to confirm the sale is perfectly consistent, and his testimony with respect thereto must be considered as entitled to more credit, under the circumstances, than that of Dyer who is contradicted most seriously and emphatically by both himself and Lansburgh.

Dyer, then having been advised by Mr. Blout that he was not satisfied with the sale and that he would not approve of the same, begins the next morning to lay the foundation for obtaining his consent, and first obtains the consent of Ryon and Tracy, and subsequently of Lansburgh under the circumstances detailed by Mr. Lansburgh in his evidence. This is the correct theory of the transaction as it actually took place. His explanation why he called upon Mr. Blout on the evening of the 26th is rather childish for a man who had been engaged for the long number of years that Mr.

Dyer has been in the real estate business, and who has the reputation of being a first-class business man. On cross-examination, when called in rebuttal on benalf of the complainant, he says (31):

"Q. When did you take the letter and give it to him?

"A. On the morning of the 27th.

"Q. Will yau swear positively that on the afternoon of the 26th you gave Mr. Lansburgh the letter marked A. No. 1?

"A. Yes, sir, most positively.

"Q. Do you not remember of having sent it through the mail to him?

"A. No sir, I did not. I delivered it personally with my own hands.

"Q. In what manner was the letter addressed to Ryon and Tracy delivered?

"A. In person.

"Q. What was the occasion of delivering that letier to Ryon and Tracy?

"A. Simply because my business calls for it. *I usually deliver letters in person.*

"Q. In all cases?

"A. In nearly all cases.

"Q. Did you deliver one to Mr. Blout?

"A. No sir.

"Q. Why not?

"A. Because I did not know him in the transaction at all.

"Q. Had you not been notified by Mr. Lansburgh on the afternoon of the 26th that Mr. Blout was interested in the sale?

"A. Mr. Lansburgh told me that Mr. Blout owned an interest and had offered to sell it to him.

"Q. Why did you not serve them with a notice?

"A. Because I was dealing with Mr. Lansburgh.

"Q. Why did you serve it only on Ryon and Tracy then?

"A. At his request.

"Q. Did he not request you to see Blout?

"A. He did.

"Q. Then why did you not serve a notice on him?

"A. I saw Mr. Blout.

"Q. Why did you not serve a notice on him?

"A. Because Mr. Blout said he would see Mr. Lansburgh.

"Q. But you had not seen Mr. Blout before you saw Mr. Lansburgh on the 26th?

"A. No, sir.

"Q. Then why did you not send a notice to Mr. Blout?

"A. Mr. Tobriner, I was dealing with Mr. Lansburgh; I recognized Mr. Lansburgh in the matter. When he asked me simply to go and notify Mr. Blout I did it as a favor to him.

"Q. Why did you send a notice to Ryon & Tracy?

"A. Simply because I had talked with Ryon and Tracy about this thing before.

"Q. But you said your custom was when you made a sale to notify the parties in interest.

"A. Yes, sir; most usually.

"Q. In pursuance of that custom you notified Mr. Lansburgh and Ryon & Tracy?

"A. Yes, sir.

"Q. At the time you notified them you knew that Mr. Blout and Clark were parties in interest in this property?

"A. Yes, sir; I did.

"Q. Why did you not notify them?

"A. Mr. Lansburgh said that he could see them himself.

"Q. Did not Mr. Lansburgh ask you to see them?

"A. He asked me to see Mr. Blout; he did not say anything about Clark.

"Q. Did he tell you what he wanted you to say to Mr. Blout?

"A. No, sir; he simply asked me to see Mr. Blout and to tell him that the sale had been made and that he was perfectly satisfied, which I did.

"Q. What interest did you understand that Mr. Blout had in the property?

"A. I did not ask the question.

"Q. Why did you want to see Mr. Blout?

"A. Simply because I was asked to do so by Mr. Lansburgh.

"Q. Did you know what you were to see him about?

"A. Yes, sir.

"Q. What?

"A. Simply to tell him that I had sold square No. 980 and that Mr. Lansburgh was satisfied.

"Q. Did you know that Mr. Blout had an interest?

"A. Yes, sir; I knew that he had an interest, but I did not know how much of an interest he owned.

"Q. You got Ryon and Tracy to approve of this sale on the 27th?

"A. Yes, sir.

"Q. Then you took it to Mr. Lansburgh to approve it?

"A. I had told Mr. Lansburgh on the 26th.

"Q. What was the answer that he gave you?

"A. Mr. Lansburgh told me that it was all right, and that he was perfectly satisfied. After that I got Ryon & Tracy's approval, and carried it back to him and showed it to him, and I said, 'Here is what Ryon & Tracy say; you do likewise.' He turned to his desk and signed it.

"Q. Why did he not sign it on the 26th?

"A. I did not ask him.

"Q. You say that you were dealing with Mr. Lansburgh altogether?

"A. Yes, sir.

"Q. Was he not the proper person to approve it?

"A. He was one of the proper persons.

"Q. Why didn't you ask him?

"A. I did not think of asking him.

"Q. Why did you ask Ryon & Tracy first?

"A. Simply because I thought it best for me to have them sign it after I had seen them and talked with them.

"Q. But you looked to Mr. Lansburgh for your authority?

"A. Certainly I did.

"Q. Why did you go to Ryon & Tracy if Mr. Lansburgh was the one to whom you looked?

"A. Because Lansburgh had asked me to see Ryon & Tracy, and also to see Blout.

"Q. Before you asked him to approve of the sale?

"A. No; when I notified him that I had made the sale.

"Q. Answer the question. Was it before you asked him to approve the sale?

"A. He had already approved it when he asked me.

"Q. But not in writing?

"A. No, sir; not in writing.

"Q. Why, then, did you, before you had gotten the written approval of Lansburgh, go to Ryon & Tracy and ask them to approve it, and when you got their approval, come to Mr. Lansburgh and say, 'now here is what Ryon & Tracy say; you do the same'?

"A. *Mr. Lansburgh had asked me to let him know what Ryon & Tracy said.*

"Q. Was there not some understanding at that time about the approval by Mr. Lansburgh?

"A. No, sir; none at all.

"Q. Why, then, did you go to Ryon & Tracy first, and, after having received their signature, say to Lansburgh, 'you do likewise'?

"A. I simply thought it was best to do it that way. That was all.

"Q. There was no question in your mind about the sale going through at the time?

"A. Not a particle.

"Q. Then you took all these precautions as a matter of course?

"A. That is so.

"Q. In all cases do you do this?

"A. Yes, sir; in nearly all cases."

Further on, at page 34, he says:

"Q. Did he not ask you to get Blout's approval?

"A. He did not. He simply asked me to report to Blout that the sale was made, and he was perfectly satisfied, which I did. Mr. Blout answered by say-

ing that he would see Mr. Lansburgh and I left him.

"Q. And yet you hunted Blout up without knowing why you were going to find him?

"A. I just told you why I was going to see him. I went there at the request of Mr. Lansburgh.

"Q. You have been in the real estate business in this city for some time?

"A. Yes, sir.

"Q. You are supposed to be a man of considerable experience.—Do you usually carry messages to people in a transaction in which you are interested without knwing why you carry them?

"A. No; and I did not carry that one without knowing why I carried it."

At page 35 he says:

"Q. Here is you testimony; I want you to answer that question. Did you not say to Mr. Blout that you had sold square 980 for 28 cents, and asked him if he was satisfied with the sale?

"A. I did not. You are not reading my testimony.

"Q. I am not reading it, but I am asking whether you did not say that. Did you know Mr. Blout at that time?

"A. I knew Mr. Blout by sight.

"Q. You did not find him at home when you called for him and you hunted him up?

"A. I did not hunt him up.

"Q. Did you ascertain where he had gone?

"A. His wife told me that he had gone out to Mr. Gus Lansburgh's, I think, or to some entertainment or other, and I drove out there. I met him at the corner of Second and H streets, I think.

"Q. Why did you not ask Mr. Lansburgh to make his approval on the letter addressed to him?

"A. Simply for the reason that I told you just now.

"Q. Why then did you ask Mr. Lansburgh to mark his approval on a letter addressed to Ryon & Tracy?

"A. *Because I thought for my own protection I had better do it.*

"Q. Had your confidence in Mr. Lansburgh been shaken over night between the 26th and 27th?
"A. Not materially shaken; no, sir."

Dyer most assuredly had some other reason for calling upon Mr. Blout than what he claims. His narration of what took place between himself and Mr. Blout is shown to have been untrue. If Dyer is to be believed, he simply acted as a messenger boy, to carry to Blout the information that a sale had been made. Not content with going to Blout's house, where he was informed that he was out attending an entertainment, he insists upon hunting him up and finally catches him on the street, when he delivers his message. Why should he have been so persistent in finding Blout (a man with whom he says he was unacquainted)? Why drive around the city seeking him out if simply to deliver a message, which could just as well have been delivered the next day, and upon the delivery of which, if Dyer is to be believed, no importance attached? Blout, however, says that, as soon as Dyer met him and informed him of the sale, he asked him if he was satisfied with it; and was informed by Blout that he was not. Mr. Dyer denies that anything of the kind took place. Record, 25.

If the facts be as Mr. Blout has stated them, Dyer was advised on the evening of the 26th that Blout was not satisfied with the proposed sale, and we find him on the next morning, calling on Mr. Lansburgh to approve the sale; Lansburgh refers him to the trustees, he goes to Ryon & Tracy's office, obtains their approval, and as he says (18):

"*I carried it back to* Mr. Lansburgh's store, I said to him, Mr. Lansburgh, *here is what Ryon & Tracy say; you do the same.*"

Why should he have gone to Ryon & Tracy for their approval first, if Lansburgh had not requested him to do so? Why should he return after having obtained their approval

and say to Lansburgh: "*Here is what Ryon & Tracy say, you do the same.*" Is it to be assumed that Dyer, who, as he claims was acting altogether for Lansburgh, would have gone to all this trouble and put himself out of the way as he says he did if Lansburgh had not objected to approving the sale before the trustees had given their assent thereto. Dyer claims that there was no objection and that the approval was unconditional. Dyer's conduct and the facts do not bear out this statement; on the contrary, they corroborate just what Lansburgh says: that his approval was conditional on the trustees being satisfied.

If, as the appellant claims, Dyer had earned his commissions, so far as a claim for it against Lansburgh was concerned, when he secured Cochran as a purchaser, there remained nothing further for him to do, and appellant places great stress upon the fact that Dyer made no further attempt to consummate the transaction, and therefore it is argued that Dyer did not consider that his compensation had been made dependent upon his getting Blout's approval of the sale, and that, consequently, such was not the fact.

It is conceded that had Dyer been authorized to make the sale, his commission would have been earned the very instant he produced a purchaser who was both willing and able to purchase. Says the appellant's brief, p. 10:

> "It is not claimed that Dyer . . . or that he saw Blout more than once—on the afternoon of the 26th—in deference to Lansburgh's request."
>
> "It is incomprehensible that Dyer rested from his labors after securing the written approval of Lansburgh, if his compensation had been made dependent upon his getting Blout's approval of the sale."

But the very converse of what is contended by appellant to be the fact appears. Dyer himself says (Rec. 24):

> "I met Mr. Blout at Ryon & Tracy's office. Mr. Blout, Mr. Lansburgh, Mr. Ryon and Mr. Tracy were at their office. I could not tell the exact date.

> I had been to Julius Lansburgh to try and straighten this thing out, and get matters settled up if possible, in some way, without having any law suit."

Lansburgh also testifies that Dyer urged him to obtain the consent of Blout. Record, 52.

If Dyer's compensation was not dependent upon the sale being approved by Blout, why did he make the efforts that the record disclose he did, to consummate the deal?

Again, appellant has selected isolated portions of the answer and testimony of Lansburgh, and without referring to what preceeds or follows claims they are so inconsistent that Lansburgh is entitled to no credit. In the first instance we say that such treatment is not fair, and secondly that the statements are consistent.

It must be remembered that Lansburgh was under the impression that Ryon & Tracy were also trustees, with Blout. As he says (Rec. 50):

> "I did not know that Mr. Ryon of the firm of Ryon & Tracy was the trustee; *I thought they both were trustees.*"

The fact is that there was only one trustee, Blout; who could not, however, act without the consent in writing of Ryon.

By an altogether natural confusion of terms Lansburgh calls the firm of Ryon & Tracy "the trustees" and collectively "one of the parties," just as he calls Blout one of the trustees. A mere verbal inaccuracy at the most.

Again in the case at bar the appellant contracted for the purchase and conveyance of the entire title to the whole square.

The purchase of an undivided interest therein was *never contemplated by the purchaser or the agent who represented*

himself as acting for the vendors. The alleged contract of sale is for "all of square 980," "the property sold as a good title or no sale." The approval of Lansburgh at the utmost *was an approval of the sale of the whole square.*

The original bill herein was filed upon the theory of such a contract, and it is only upon discovery of an inability to make proof thereof that there is a change of front and an attempt to make a case under which the appellee can be compelled to convey his individual interest.

As this court in Carr *vs.* Duval, 14 Pet. 81, well say :

> **"The idea of a partial sale and purchase not entering into the contemplation of either party, we must construe the letter of sixteenth of January in reference to this undoubted intention."**

Vide also—

Mortlock *vs.* Buller, 10 Vesey, Jun., 315, *supra.*

Because Lansburgh gave evidence of his assent to a sale of the entire title and property, should he be compelled to convey his individual interest, when there is a failure to make a sale of the whole. To decree conveyance would practically be compelling him to execute a contract which he never contemplated or entered into. It would be compelling him to do something which he did not agree to do. It would be making a new contract between the parties.

Says this court in Hennessy *vs.* Woolworth, 128 U. S. 438, 442:

> "Specific performance should never be granted, unless the terms of the agreement sought to be enforced are clearly proved or where it is left in doubt *whether the party against whom relief is asked in fact made such an agreement.*" . . .
>
> "The question in cases of specific performances, said Lord Eldon, is not what the court must do, but what, under the circumstances, it may do, in the exercise of its discretion to grant or withhold relief of that character."

"Specific performance is not of absolute right. It rests entirely in judicial discretion, exercised, it is true, according to the settled principles of equity, and not arbitrarily or capriciously, yet always with reference to the facts of the particular case."

Hennessy *vs.* Woolworth, 128 U. S. 422.
Willard *vs.* Tayloe, 8 Wall. 561–4.
Seymour *vs.* Delancy, 6 John. Ch. 224.
McCabe *vs.* Matthews, 155 U. S. 553.

A court of equity has no more jurisdiction than a court of law to vary the express agreements between the parties. A court of equity will not make a contract for the parties by compelling the vendor to do what he did not agree to do, because what he agreed should be done, cannot be done.

2 Lead Cas. Eq. 4 Am. Ed. 1149.

"Equity may compel parties to perform their agreements, when fairly entered into according to their terms; but it has no power to make agreements for parties, and then compel them to execute the same. The former is a legitimate branch of its jurisdiction, and in its exercise, is highly beneficial to society. The latter is without its authority, and the exercise of it would be not only a usurpation of power, but would be highly mischievous in its consequences."

Hunt *vs.* Rousemaniere, 1 Pet. 1–14.

"When equity assists a party in obtaining his right under a contract, it does so on the principle that the very contract *as assented to by the party* alleged to be in default *is alone* to be enforced."

Railey *vs.* Bacon, 26 Miss. 455.

Parol evidence is admissible to show that such a condition was annexed to the approval.

Such evidence does not contradict or vary the original

instrument by parol testimony; it belongs to that class of cases which this court has said:

> "Is well recognized in the law by which an escrow, or the obligee in it, is made to depend as to its going into operation, upon an event to occur or to be ascertained thereafter."

Ware *vs.* Allen, 128 U. S. 590.
Burke *vs.* Dulaney, 153 U. S. 228.
Butler *vs.* Smith, 35 Miss. 463.
Morgan *vs.* Griffith, 6 Exchr. Law Rep. 70.
Angel *vs.* Dake, 10 Queen's Bench, 174.
Wilson *vs.* Power, 131 Mass. 540.
Benton *vs.* Martin. 52 N. Y. 574.
Juliard *vs.* Chaffee, 92 N. Y. 535.
Reynolds *vs.* Bobinson, 110 N. Y. 654.
Englehorn *vs.* Reitlinger 122 N. Y. 80.

There is nothing in the Record to show that appellant ever saw the "approval" prior to filing his bill; it is certain that he did nothing on the strength of it. If Dyer delivered it to him, of which there is no proof, it must have been after appellant was informed that the approval was conditional, for this was the only difficulty in completing the sale.

We respectfully submit that the decree below should be affirmed.

A. B. DUVALL,
LEON TOBRINER,
For Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1896.

GEORGE W. COCHRAN, APPELLANT,
vs.
ISAAC L. BLOUT, JAMES P. KNOX AND JULIUS LANSBURGH, APPELLEES. } No. 415

BRIEF OF THE APPELLANT TO THE MERITS IN BEHALF OF APPELLEE LANSBURGH.

SAMUEL MADDOX,
A. S. WORTHINGTON,
Solicitors for Appellee.

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Supreme Court U. S.
FILED
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Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE W. COCHRAN, APPELLANT,
vs.
ISAAC L. BLOUT, JAMES P. RYON AND JULIUS LANSBURGH, APPELLEES.
No. 116.

REPLY OF THE APPELLANT TO THE BRIEF FILED IN BEHALF OF APPELLEE LANSBURGH.

SAMUEL MADDOX,
A. S. WORTHINGTON,
Solicitors for Appellant.

Law Reporter Print.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE W. COCHRAN, APPELLANT,
vs.
ISAAC L. BLOUT, JAMES P. RYON AND JULIUS LANSBURGH, APPELLEES.
No. 116.

Supplemental Brief for Appellant.

In view of the fact that counsel for appellee Lansburgh have, in this court, relied upon propositions of law which were not mentioned either in the argument in the Special Term, or at the hearing in the General Term, in the court below, we submit the following additional points and authorities:

I.

The contract relied upon in this cause is in no proper sense a contract for an option. That term implies that the purchaser has the right within a limited time to take the property or not as he pleases—the vendor, on the other hand, being required to convey at any time within the period fixed by the contract if the vendee elects to take the property and complies with the terms of sale. In the case

at bar the appellant Cochran agreed absolutely to take the property and pay for it on the terms and conditions mentioned in the contract signed by Dyer and afterwards approved by Lansburgh.

With regard to this Dyer says (R. p. 15):

> "I drove him (Cochran) out with me and showed him the ground. I drove him all round it and I saw that he was interested in the thing. He asked me what was the price of it, and I told him 28 cents a foot. He asked me if that was the lowest that would buy it, and I told him it was. After we got away from the square a little further, probably two squares from this block, he said to me, 'Dyer, I will take that square, if that is the best you can do.' . . .
>
> "He went to my office and made a deposit on the square, and I gave him a binding receipt for it."

Appellant Cochran says, (R. p. 78):

> "He (Dyer) then drove me to this square. He told me the square was in his hands for sale at 28 cents a foot. He drove me to the front of this square on I street—that is the South front. I looked at it and did not seee any street on the other side nor any terminus. Said I, 'Dyer, drive me around the square.' He deliberately drove me around the square, and I looked it all over, and thought for a few moments, and I told him I would take it.
>
> "Q. At what figure?
>
> "A. At 28 cents a foot."

We respectfully submit that counsel for the appellees, as well as the Court of Appeals of the District of Columbia, in the cases referred to by them, have confused the sale of an option proper with a transaction in which one of the parties to the contract is bound because he has signed it, and the other cannot be compelled to perform, because, not having signed it, the Statute of Frauds affords him a complete defense to a suit for specific performance.

II.

The rule of law is well established that where a contract for the sale of land has been signed by one of the parties thereto only, he may be compelled to perform; and that the objection of want of mutuality will not prevail. The Statute of Frauds does not require that the contract shall be signed by both parties, but simply that no party shall be charged unless the contract be signed by him or his agent.

> "The statute requiring that the agreement, or a memorandum or note thereof, shall be signed by the party to be charged therewith, or his agent, and not requiring that it shall be signed by both parties to the contract, it has been held, both in the courts of equity and common law, that a signature by the party against whom the contract is sought to be enforced is sufficient."
>
> Fry on Specific Performance, 3d Edition, Section 497.

See also:

3 Pomeroy's Equity Jurisprudence, Section 1405.
Hodges *vs.* Knowing, 58 Conn. 12.
Moses *vs.* McLain, 82 Ala. 370.
Ross *vs.* Parks, 93 Ala. 153.
Doctor *vs.* Heilberg, 65 Wis. 415.
Mastin *vs.* Grimes, 88 Mo. 478.
Esmay *vs.* Gorton, 18 Ill. 483.
McRae *vs.* Purmount, 16 Wend. 460.
Justice *vs.* Lang, 42 N. Y. 493.
Johnson *vs.* Trippe, 33 Fed. Rep. 530.
Smith & Fleek's Appeal, 69 Pa. St. 474.

As was well said in an old English case, cited with approval in Butler *vs.* Thomson, 92 U. S. 415:

> "Contracts may exist, which, by reason of the Statute of Frauds, could be enforced by one party,

> although they could not be enforced by the other party. The Statute of Frauds, in that respect, throws a difficulty in the way of the *evidence*. The objection does not interfere with the substance of the contract, and it is the negligence of the other party that he did not take care to obtain and preserve admissible evidence to enable himself also to enforce it."

III.

In their brief, counsel for the appellee Lansburgh contend that the appellant Cochran, while negotiating for the purchase of the square—

> "had full notice an information that a number of persons were interested in the property."

On this point two witnesses have testified—Dyer and the appellant himself. The former says (Rec. p. 15):

> "I think he asked me the question about who owned it, and I told him Julius Lansburgh was the man I was dealing with, and that I represented him, and that he was the owner of the property or one of the owners, and that I believed Ryon & Tracy were also one of the owners."

Wherefore, Dyer signed the contract as "Agent for Julius Lansburgh and others," meaning by "others," manifestly, Ryon & Tracy. But at this time he did not know what interest Ryon & Tracy had in the property, nor did Lansburgh, for he seems to have been of the impression that Ryon & Tracy were one of the trustees. Nor did he mention to Dyer the name of Blout until after the contract of sale to Cochran had been entered into, for he, Lansburgh, says (Rec. p. 53):

> "I gave him the names of each and every party at the time he came to me after the sale" (to Cochran).

"Q. Prior to that time you only said that you were interested in it jointly with others?
"A. Yes, sir."

All of which is entirely consistent with Dyer's statement that, at the time of the sale to Cochran, he did not know that any other persons than Lansburgh and Ryon & Tracy were interested in the ownership of the square. And all of the parties known to him when the sale was closed, and for whom he was acting as agent, in writing unconditionally approved his contract of sale.

Mr. Cochran testifies (Rec. p. 79) that at the time he agreed to take the square at 28 cents, he supposed Dyer was the agent of the owner or owners (he did not remember whether Dyer said *owner* or *owners*), but he did not know who they were (Rec. p. 82) nor did he know that the property was held in trust, or the beneficiaries under it. all he knew was what Dyer told him—that Lansburgh was the owner or one of the owners, and that he believed Ryon & Tracy were also one of the owners. He dealt exclusively with Dyer, who represented himself to be the agent of the owners, and who, under the authority given him by Lansburgh, contracted to sell and convey the entire square. Nor was it appellant's fault that the terms of sale were not complied with within the time limited in the contract. On this point he says (Rec. p. 79):

"It was the fault of the owner or owners, not my fault. Mr. Dyer had been repeatedly informed that I was ready to comply with the terms of sale."

When he learned that Blout and Clark refused to convey their interests, appellant authorized Mr. Dyer and Mr. Maddox to take Lansburgh's individual interest. Rec. p. 84.

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